84-1360

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE CITY OF RENTON, *et al.*,
Appellants,

v.

PLAYTIME THEATRES, INC.,
a Washington corporation, *et al.*,
Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

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APPENDIX TO JURISDICTIONAL STATEMENT

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APPENDIX A

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

Nos. 83-3805, 83-3980

PLAYTIME THEATERS, INC.,
a Washington corporation, *et al.*,
Plaintiffs-Appellants,

v.

THE CITY OF RENTON, *et al.*,
Defendants-Appellees.

THE CITY OF RENTON,
a municipal corporation, *et al.*,
Plaintiffs-Appellants,

v.

PLAYTIME THEATERS, INC.,
a Washington corporation, *et al.*,
Defendants-Appellees.

Argued and Submitted May 9, 1984

Decided Nov. 28, 1984

Robert Eugene Smith, Encino, Cal., for Playtime Theaters, Inc.

Lawrence J. Warren, Daniel Kellogg, Warren & Kellogg, Renton, Wash., for City of Renton.

Appeal from the United States District Court
for the Western District of Washington

Before FLETCHER and FARRIS, Circuit Judges, and JAMESON,* District Judge.

FLETCHER, Circuit Judge:

These consolidated cases are declaratory judgment actions involving the constitutionality of the City of Renton's zoning ordinances regulating the location of adult motion picture theaters.

In case number 83-3805, Playtime Theaters, Inc. ("Playtime") appeals the district court's order denying a permanent injunction and finding that the ordinance furthers a substantial governmental interest, is unrelated to the suppression of speech, and is no more restrictive than necessary to further that interest. Case number 83-3980 is a declaratory action involving the same parties and issues, filed by the City of Renton in state court after federal proceedings had begun. This action was twice removed to federal court and twice remanded to state court. Renton appeals the district court's denial of its motion for fees and costs on the second removal. We reverse in number 83-3805 and affirm in number 83-3980.

I

BACKGROUND

In April, 1981, the City of Renton enacted ordinance number 3526 which prohibited any "adult motion picture theater" [1] within one thousand feet of any residential

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* Hon. William J. Jameson, Senior United States District Judge for the District of Montana, sitting by designation.

[1] The first ordinance defined an "adult motion picture theater" as an enclosed building used for presenting motion picture films,

zone or single or multiple family dwelling, any church or other religious institution, and any public park or area zoned for such use. The ordinance further prohibited any such theater from locating within one mile of any public or private school. At the time this ordinance was enacted, no adult theaters were located in Renton, although there were other theaters within the proscribed area.

In January, 1982, Playtime acquired two existing theaters in Renton with the purpose of exhibiting adult motion pictures in at least one, the Renton Theater, which is

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video cassettes, cable television, or any other such visual media, distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as hereafter defined, for observation by patrons therein.

The ordinance defined these terms as follows:

> 2. *"Specified Sexual Activities"*:
>
> (a) Human genitals in a state of sexual stimulation or arousal;
>
> (b) Acts of human masturbation, sexual intercourse or sodomy;
>
> (c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
>
> 3. *"Specified Anatomical Areas"*:
>
> (a) Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and
>
> (b) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

The second ordinance expanded the defined term of "used" as:

> a continuing course of conduct of exhibiting "specific [sic specified?] sexual activities" and "specified anatomical area["] in a manner which appeals to a prurient interest.

located within the area proscribed by ordinance number 3526.[2]

Just prior to closing the sale of the theater, on January 20, 1982, Playtime filed an action in federal court, seeking a declaration that the ordinance was unconstitutional and a permanent injunction against its enforcement.

A month later, on February 19, 1982, Renton brought suit in state court seeking a declaratory judgment that the ordinance was constitutional on its face and as applied to Playtime's proposed use. The complaint alleged that an actual dispute existed because of the pending federal lawsuit and because Playtime asserted that the ordinance was unconstitutional. On February 22, 1982, Renton moved to dismiss Playtime's federal action on the grounds that the federal court should abstain in favor of the state action, citing *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), and *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975).

On March 8, 1982, Playtime removed the state action to federal court and Renton moved to remand. On March 25, the magistrate filed his recommendation that abstention was improper in the first action and on April 9, he recommended that the removed state action be remanded for lack of jurisdiction because the complaint failed to state a claim upon which relief could be granted. The district court approved both recommendations, denying the motion to dismiss the federal action on May 5, 1982, and remanding the state action on January 13, 1983.

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[2] For the purposes of this opinion, "adult motion picture theater" or "adult theater" refers to the definition used by the City. *See supra* note 1. We express no view as to the effect of this definition on the constitutionality of the ordinance. *See infra* note 18.

On May 3, 1982, Renton passed an emergency ordinance, amending ordinance number 3526. The new ordinance added an elaborate statement of reasons for the enactment of the ordinances,[3] it further defined the word

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[3] The City gave the following reasons in the amended ordinance:

1. Areas within close walking distance of single and multiple family dwellings should be free of adult entertainment land uses.
2. Areas where children could be expected to walk, patronize or recreate should be free of adult entertainment land uses.
3. Adult entertainment land uses should be located in areas of the City which are not in close proximity to residential uses, churches, parks and other public facilities, and schools.
4. The image of the City of Renton as a pleasant and attractive place to reside will be adversely affected by the presence of adult entertainment land uses in close proximity to residential land uses, churches, parks and other public facilities, and schools.
5. Regulation of adult entertainment land uses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than in response to an existing problem.
6. Commercial areas of the City patronized by young people and children should be free of adult entertainment land uses.
7. The Renton School District opposes a location of adult entertainment land uses within the perimeters of its policy regarding bussing of students, so that students walking to school will not be subjected to confrontation with the existence of adult entertainment land uses.
8. The Renton School District finds that location of adult entertainment land uses in areas of the City which are in close proximity to schools, and commercial areas patronized by students and young people, will have a detrimental effect upon the quality of education which the School District is providing for its students.
9. The Renton School District finds that education of its students will be negatively affected by location of adult entertainment land uses in close proximity to location of schools.
10. Adult entertainment land uses should be regulations [sic] by zoning to separate it from other dissimilar uses just as

any other land use should be separated from uses with characteristics different from itself.

11. Residents of the City of Renton, and persons who are non-residents but use the City of Renton for shopping and other commercial needs, will move from the community or shop elsewhere if adult entertainment land uses are allowed to locate in close proximity to residential uses, churches, parks and other public facilities, and schools.

12. Location of adult entertainment land uses in proximity to residential uses, churches, parks and other public facilities, and schools, may lead to increased levels of criminal activities, including prostitution, rape, incest and assaults in the vicinity of such adult entertainment land uses.

13. Merchants in the commercial area of the City are concerned about adverse impacts upon the character and quality of the City in the event that adult entertainment land uses are located within close proximity to residential uses, churches, parks and other public facilities, and schools. Location of adult entertainment land uses in close proximity to residential uses, churches, parks and other public facilities, and schools, will reduce retail trade to commercial uses in the vicinity, thus reducing property values and tax revenues to the City. Such adverse affect [sic] on property values will cause the loss of some commercial establishments followed by a blighting effect upon the commercial districts within the City, leading to further deterioration of the commercial quality of the City.

14. Experience in numerous other cities, including Seattle, Tacoma and Detroit, Michigan, has shown that location of adult entertainment land uses degrade the quality of the area of the City in which they are located and cause a blighting effect upon the City. The skid row effect, which is evident in certain parts of Seattle and other cities, will have a significantly larger affect [sic] upon the City of Renton than other major cities due to the relative sizes of the cities.

15. No evidence has been presented to show that location of adult entertainment land uses within the City will improve the commercial viability of the community.

16. Location of adult entertainment land uses within walking distance of churches and other religious facilities will have an adverse effect upon the ministry of such churches and

"used," [4] and it reduced the required distance from schools from one mile to 1000 feet. The ordinance also contained a clause stating that the federal litigation created an emergency making immediate adoption of the new ordinance necessary.[5] The ordinance was reenacted on June 14, 1982, without the emergency clause.

will discourage attendance at such churches by the proximity of adult entertainment land uses.

17. A reasonable regulation of the location of adult entertainment land uses will provide for the protection of the image of the community and its property values, and protect the residents of the community from the adverse effects of such adult entertainment land uses, while providing to those who desire to patronize adult entertainment land uses such an opportunity in areas within the City which are appropriate for location of adult entertainment land uses.

18. The community will be an undesirable place to live if it is known on the basis of its image as the location of adult entertainment land uses.

19. A stable atmosphere for the rearing of families cannot be achieved in close proximity to adult entertainment land uses.

20. The initial location of adult entertainment land uses will lead to the location of additional and similar uses within the same vicinity, thus multiplying the adverse impact of the initial location of adult entertainment land uses upon the residential, [sic] churches, parks and other public facilities, and schools, and the impact upon the image and quality of the character of the community.

[4] *See supra* note 1.

[5] The emergency clause stated:

The City Council of the City of Renton finds and declares that an emergency exists because of the pendency of litigation against the City of Renton involving the subject matter of this ordinance, and potential liability of the City of Renton for damages as pleaded in that litigation, and that the immediate adoption of this ordinance is necessary for the immediate preservation of public peak [sic], health, and safety or for the support of city government and its existing public institutions and the integrity of the zoning of the City of Renton. There-

On June 23, 1982, the magistrate heard Playtime's motion for preliminary injunction and Renton's motions to dismiss and for summary judgment. On November 5, 1982, he filed his recommendation to deny Renton's motion and to grant Playtime a preliminary injunction. He found that the ordinance "for all practical purposes excludes adult theaters from the City," that only 200 acres were not restricted by the ordinance, and that all of these areas were "entirely unsuited to movie theater use." He further found that Renton had not established a factual basis for the adoption of the ordinance and that the motives behind the ordinance reflected "simple distaste for adult theaters because of the content of the films shown." On January 11, 1983, the district court entered an order approving and adopting these findings and granting a preliminary injunction.[6] For the first time, Playtime began showing adult movies at the Renton Theater.

On February 8, 1983, the parties entered into a stipulation to submit the case for hearing on whether a permanent injunction should issue on the basis of the record already developed. On February 17, 1983, the district court vacated the preliminary injunction and denied the permanent injunction. The court found that 520 acres were available as potential sites for adult theater use and that this ordinance did not substantially restrict first amendment interests.[7] The court further held that

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fore, this ordinance shall take effect immediately upon its passage and approval by the Mayor.

The City used this clause as justification for a renewed motion to dismiss and a motion for summary judgment, both of which were filed on May 4, the next day.

[6] We denied the City's application for a writ of mandamus to stay the preliminary injunction.

[7] The court did not explain the variance between this finding and its prior finding, made at the time it granted the preliminary injunction, that only 200 acres were available.

Renton was not required to show specific adverse impact on Renton from the operation of adult theaters but could rely on the experiences of other cities. Lastly, the court found that the purposes of the ordinance were unrelated to the suppression of speech and that the restrictions it imposed were no greater than necessary to further the governmental interest.

On May 19, 1983, after denial of the permanent injunction, and after the notice of appeal was filed in this court, Renton filed an amended complaint in state court seeking, in addition to the originally requested declaratory relief, abatement of the operation of Playtime's adult theaters. On June 8, 1983, Playtime removed the action to federal court on the ground that Renton sought to enforce statutes that had been declared unconstitutional by this court. The district court remanded because the case did not arise under federal law; the federal issue was only a defense. It denied Renton's motion for costs and fees because it found that the petition raised serious questions of law and that Playtime had not acted in bad faith. Renton appeals the denial of costs and fees.

II

JURISDICTION

Renton argues that abstention was appropriate in this case because it involves vital state interests, *see Railroad Commission v. Pullman Co.*, 312 U.S. 496, 501, 61 S.Ct. 643, 645, 85 L.Ed. 971 (1941), and because the exercise of federal jurisdiction would interfere with the pending state action, *see Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). We do not agree.

A. Pullman *Abstention is Inappropriate in This Case.*

We recently held that the *Pullman* abstention doctrine was inapplicable in a facial challenge to Washington's anti-obscenity statute. *J-R Distributors, Inc. v. Eiken-*

berry, 725 F.2d 482 (9th Cir. 1984). We recognized that *Pullman* abstention would almost never be appropriate in first amendment cases because such cases involve strong federal interests and because abstention could result in the suppression of free speech. *Id.* at 487-88. Similarly, we find that the district court in the case at hand appropriately declined to abstain because "abstention would not eliminate or materially alter the constitutional issues presented." *Spokane Arcades, Inc. v. Brockett*, 631 F.2d 135, 137 (9th Cir. 1980), *aff'd mem.*, 454 U.S. 1022, 102 S.Ct. 557, 70 L.Ed.2d 468 (1981).

B. Younger *Abstention is Inappropriate in This Case.*

We find *Younger* abstention inappropriate as well. Federal courts, concerned for federal-state comity, have employed *Younger* abstention to prevent federal interference with pending state criminal proceedings. *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 469 (9th Cir. 1984); *see also Huffman v. Pursue, Ltd.*, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975). In this case, Renton asked the district court to abstain in favor of a state court action that sought only a declaration of the ordinance's constitutionality.

The cases applying *Younger* abstention have arisen in criminal or quasi-criminal contexts. We have refused to extend *Younger* to civil cases generally. *See Goldie's Bookstore*, 739 F.2d at 469-70; *Champion International Corp. v. Brown*, 731 F.2d 1406 (9th Cir. 1984). We agree with the district court's refusal to do so in this case as well. As we discussed in *Miofsky v. Superior Court*, 703 F.2d 332 (9th Cir. 1983), in each of the cases in which *Younger* has been applied in a civil context, the civil suits "bore similarities to criminal proceedings or otherwise implicated state interests vital to the *operation* of state government." *Id.* at 337 (emphasis added). These dual requirements are not present in a civil case seeking only declaratory relief.

Playtime did not violate the ordinance prior to challenging it. Thus, it was not even potentially subject to the sort of enforcement action to which *Younger* applies. In *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 95 S.Ct. 2561, 45 L.Ed.2d 648 (1975), the plaintiff challenged a local ordinance prohibiting topless dancing in bars. Three bars in the town were affected and all complied with the ordinance prior to commencing suit in federal court. The day after the federal complaint was filed, one bar, M & L, resumed topless dancing and was prosecuted criminally. The other two bar owners remained in compliance. The court held that *Younger* abstention applied to M & L, but the retention of jurisdiction over the other two bar owners was proper because they were not subject to criminal prosecution prior to the issuance of the preliminary injunction. Playtime's position is like that of the two bars in *Doran*.

Playtime showed adult films in Renton for the first time after the district court entered its preliminary injunction. By the time Renton amended its complaint in the state action to include abatement of the nuisance, making it the sort of enforcement action to which *Younger* might arguably apply,[8] final judgment denying

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[8] In *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975), the Supreme Court held that a federal court could not enjoin enforcement of a state judgment in a nuisance abatement action brought by the state against an adult theater. The Court rejected the argument that *Younger* was restricted to criminal proceedings, but carefully limited its holding by recognizing that the state action was "in important respects . . . more akin to a criminal prosecution than are most civil cases. . . . The proceeding is both in aid of and closely related to criminal statutes . . . ." *Id.* at 604, 95 S.Ct. at 1208. In *Judice v. Vail*, 430 U.S. 327, 97 S.Ct. 1211, 51 L.Ed.2d 376 (1977), the Court held that *Younger* applied to a state civil contempt proceeding because the state's "interest in the contempt process . . . vindicates the regular operation of its judicial system." *Id.* at 335, 97 S.Ct. at 1217. In *Trainor v. Hernandez*, 431 U.S. 434, 97 S.Ct. 1911, 52 L.Ed.2d 486 (1977), abstention was required in deference to a prior state civil action brought by the state of Illinois to recover welfare pay-

the injunction had already been granted in the district court. At this point, abstention was inappropriate.[9]

III

THE STANDARDS FOR REGULATION OF SPEECH THROUGH THE USE OF THE ZONING POWER

Local governments may zone for the public welfare. *See Berman v. Parker*, 348 U.S. 26, 32-33, 75 S.Ct. 98, 102-103, 99 L.Ed. 27 (1954). The power is considerable

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ments obtained by fraud. The Court noted, however, that the action was "an ongoing civil enforcement action . . . brought by the State in its sovereign capacity." *Id.* at 444, 97 S.Ct. at 1918. And, in *Moore v. Sims*, 442 U.S. 415, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979), abstention was required as to a pending state proceeding in which the state was seeking custody of children abused by their parents.

[9] The court in *Huffman* recognized that

> "When no state criminal proceeding is pending at the time the federal complaint is filed, federal intervention does not result in duplicative legal proceedings or disruption of the state criminal justice system; nor can federal intervention, in that circumstance, be interpreted as reflecting negatively upon the state court's ability to enforce constitutional principles."

Huffman, 420 U.S. at 603, 95 S.Ct. at 1207-1208 (quoting *Steffel v. Thompson*, 415 U.S. 452, 462, 94 S.Ct. 1209, 1217, 39 L.Ed.2d 505 (1974)).

If, however, "state criminal proceedings are begun against the federal plaintiffs after the federal complaint is filed but *before any proceedings of substance on the merits* have taken place in the federal court, the principles of *Younger v. Harris* should apply in full force." *Hicks v. Miranda*, 422 U.S. 332, 349, 95 S.Ct. 2281, 2292, 45 L.Ed.2d 223 (1975) (emphasis added). In *Hicks*, state officials confiscated allegedly obscene movies and brought an action in state court against two employees of the theater. The theater owners sought injunctive relief in federal court and the day after the owners filed the federal complaint, the state charged the theater owners along with their employees in state court. The court applied *Younger* because "appellees were charged . . . prior to answering the federal case and prior to any proceedings whatsoever before the three judge court." *Id.* at 349-50, 95 S.Ct. at 2292.

but it must be exercised within constitutional limits. *See Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68, 101 S.Ct. 2176, 2182, 68 L.Ed.2d 671 (1981). We have an obligation to scrutinize strictly zoning decisions that infringe first amendment rights. *Tovar v. Billmeyer*, 721 F.2d 1260, 1264 (9th Cir. 1983), *cert. denied*, —— U.S. ——, 105 S.Ct. 223, 83 L.Ed.2d 152 (1984).[10]

The district court found that 520 acres in Renton were available for adult theater sites. Although we do not quarrel with the conclusion that 520 acres is outside the restricted zone, we do not agree that the land is available.[11] A substantial part of the 520 acres is occupied by:

(1) a sewage disposal site and treatment plant;

(2) a horseracing track and environs;

(3) a business park containing buildings suitable only for industrial use;

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[10] We note that obscenity is not at issue in this case. The City asks us to take notice of a state superior court decision in *City of Renton v. Playtime Theaters*, No. 82-2-02344-2 (Superior Court, King County, Washington, March 9, 1984), in which an advisory jury ruled that four out of ten movies shown by Playtime are obscene. The City did not argue before the district court that Playtime's movies were obscene. We would not reach the issue in any event since this case does not involve the enforcement of an anti-obscenity statute.

[11] Although this circuit has not considered what "available" means in this context, we draw support from the Court's statement in *Young* that "[t]he situation would be quite different if the ordinance had the effect of suppressing, or greatly restricting access to, lawful speech." 427 U.S. at 71 n. 35, 96 S.Ct. at 2453 n. 35. *See Basiardanes v. City of Galveston*, 682 F.2d 1203, 1214 (5th Cir. 1982) (expanding on footnote in *Young*, court noted that permitted locations were "among warehouses, shipyards, undeveloped areas, and swamps.").

(4) a warehouse and manufacturing facilities;

(5) a Mobil Oil tank farm; and

(6) a fully-developed shopping center.

Limiting adult theater uses to these areas is a substantial restriction on speech. Thus, the Renton ordinance, although patterned after the Detroit zoning ordinance upheld in *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), is quite different in its effect. The Detroit ordinance prohibited the location of an adult theater within 1,000 feet of another adult theater or other use having similar deleterious effects on neighborhoods, or within 500 feet of a residential area. There was no showing in *Young* that the ordinance seriously limited the number of sites available for adult theaters. The Renton ordinance's prohibition against adult theaters within 1,000 feet of schools, parks, churches, and residential areas would result in a substantial restriction on this activity.

The Supreme Court developed a useful test to measure a challenged regulation affecting speech in *United States v. O'Brien*, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968), cited with approval in *Schad*, 452 U.S. at 69 n. 7, 101 S.Ct. at 2183 n. 7. Under this test, a regulation is constitutional only if (1) it is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) the governmental interest is unrelated to the suppression of free speech; and (4) the incidental restriction on first amendment freedom is no greater than essential to further that interest. *O'Brien*, 391 U.S. at 377, 88 S.Ct. at 1679. Here, Renton bears the burden of proving that the elements of this test are satisfied. *See First National Bank v. Bellotti*, 435 U.S. 765, 786, 98 S.Ct. 1407, 1421, 55 L.Ed.2d 707 (1978).

IV

STANDARD OF REVIEW

The parties stipulated that the record developed at the preliminary injunction stage would serve as the record upon which the court could decide the permanent injunction. The parties in effect submitted the case for trial upon an agreed record, the district court resolving any disputed issues of fact presented by the record.[12] We review these factual determinations under a clearly erroneous standard. We do not, however, apply a clearly erroneous standard of review to the district court's findings on the *O'Brien* factors because our recent decision in *United States v. McConney*, 728 F.2d 1195 (9th Cir.) (en banc), *cert. denied*, —— U.S. ——, 105 S.Ct. 101, 83 L.Ed.2d 46 (1984), and the Supreme Court's recent decision in *Bose Corp. v. Consumers Union of United States, Inc.*, —— U.S. ——, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984), require us to review them *de novo*.

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[12] In *Starsky v. Williams*, 512 F.2d 109 (9th Cir. 1975), we recognized,

> "[W]hile summary judgment cannot be granted where there are questions of fact to be disposed of, even by consent of all concerned, there is no reason why parties cannot agree to try a case upon affidavits, admissions and agreed documents. In effect, that is what was done here. No objection whatever was made at the time of submission that there were questions of fact which could not be decided upon the evidence before the trial court."

Id. at 113 (quoting *Gillespie v. Norris*, 231 F.2d 881, 883-84 (9th Cir. 1956)). This statement applies here as well.

Playtime asserts that summary judgment was improper because it relied on the district court's findings on the preliminary injunction in entering into the stipulation. Thus, Playtime argues, when the district court inexplicably changed its findings of fact, it created material disputed issues of fact that would make summary judgment improper. Although we sympathize with Playtime's argument, we agree with Renton. Playtime made a tactical choice not to submit further documentation or testimony and cannot now complain.

In *McConney* we held that mixed questions of fact and law are subject to *de novo* review when they require us "to exercise judgment about the values that animate legal principles . . . ." 728 F.2d at 1202. In no area of law is the consideration of the values behind legal principles more important than when state action threatens to infringe on activity protected by the first amendment.

In *Bose Corp.*, the Supreme Court held that a trial court's finding as to "actual malice" in a libel case was subject to *de novo* review. The question as framed by the Court was "whether the evidence in the record . . . is of the convincing clarity required to strip the utterance of First Amendment protection. . . . Judges . . . must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold . . ." 104 S.Ct. at 1965. The Court recognized that it "has regularly conducted an independent review of the record both to be sure that the speech in question actually falls within the protected category and to confine the perimeters of any unprotected category within acceptably narrow limits in an effort to ensure that protected expression will not be inhibited." *Id.* 104 S.Ct. at 1962. We have a similar duty in the case at hand.[13]

V

APPLICATION OF THE O'BRIEN FACTORS

A. *Renton Has Not Shown a Substantial Governmental Interest.*

The record presented by Renton to support its asserted interest in enacting the zoning ordinance is very

[13] We will not deal with the first factor of *United States v. O'Brien*, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968), in detail, for all agree that such a zoning ordinance is within the constitutional power of the government. *See Berman v. Parker*, 348 U.S. 26, 32-33, 75 S.Ct. 98, 102-103, 99 L.Ed. 27 (1954); *see also Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 68, 101 S.Ct. 2176, 2182, 68 L.Ed.2d 671 (1981).

thin. The ordinance itself contains only conclusory statements. No record of the public hearing was made or preserved. City officials who attended testified that the hearing was held, but said little else. To uphold the substantiality of the governmental interest, the district court had to justify Renton's reliance on the experiences of other towns and cities, particularly Detroit and Seattle, citing the Seventh Circuit's decision in *Genusa v. City of Peoria*, 619 F.2d 1203 (7th Cir. 1980).

In *Genusa*, the court relied on *Young* to uphold a provision of a zoning ordinance which required, just as the Detroit ordinance did, the dispersal of adult uses. *Id.* at 1211. Although the Renton ordinance *purports* to copy Detroit's and Seattle's, it does not solve the same problem in the same manner. The Detroit ordinance was intended to disperse adult theaters throughout the city so that no one district would deteriorate due to a concentration of such theaters. The Seattle ordinance, by contrast, was intended to *concentrate* the threaters in one place so that the whole city would not bear the effects of them. The Renton ordinance is allegedly aimed at protecting certain uses—schools, parks, churches and residential areas—from the perceived unfavorable effects of an adult theater.

This court and the Supreme Court require Renton to justify its ordinance in the context of *Renton's* problems —not Seattle's or Detroit's problems. In *Young*, the plurality found that the record disclosed a factual basis for the council's determinations, 427 U.S. at 71, 96 S.Ct. at 2452, and Justice Powell cited "reports and affidavits from sociologists and urban planning experts, as well as some laymen." *Id.* at 81 n. 4, 96 S.Ct. at 2457-58 n. 4 (Powell, J., concurring).[14] Similarly, in the Seattle case,

[14] The Court in *Schad* recognized that ordinances must address particular problems, citing Justice Powell's concurrence in *Young:*

> Emphasizing that the restriction was tailored to the particular problem identified by the City Council, [Justice Powell] ac-

the zoning ordinance was the "culmination of a long period of study and discussion." *Northend Cinema, Inc. v. City of Seattle*, 90 Wash.2d 709, 711, 585 P.2d 1153 (1978), *cert. denied*, 441 U.S. 945, 99 S.Ct. 2166, 60 L.Ed.2d 1048 (1979). By contrast, in *Schad*, which invalidated an ordinance prohibiting live nude dancing in the town, the Supreme Court stressed that the Borough had not adequately justified its substantial restriction by evidence in the record. 452 U.S. at 72, 101 S.Ct. at 2184. The Court cited by way of contrast the full record made in *Young*. *Id.*

In *Kuzinich v. County of Santa Clara*, 689 F.2d 1345 (9th Cir. 1982), we reversed summary judgment validating a zoning ordinance regulating adult theaters and bookstores in part because of lack of evidence. We said, "While the ordinance here was said to be copied after the Detroit ordinance validated in *Young*, we find very little evidence bearing on the concentration of adult enterprises." *Id.* at 1348. We found that "[c]onclusions alone support the thesis that adult bookstores and movie theaters have any different impact upon traffic and littering than other kinds of businesses have." *Id.* Further, in *Ebel v. City of Corona*, 698 F.2d 390, 393 (9th Cir. 1983), we remanded for "factual findings on the validity of the city's assertions of harm." *Accord Basiardanes v. City of Galveston*, 682 F.2d 1203, 1215 (5th Cir. 1982) (contrasting record in *Young* against "empty" record before it); *Fantasy Book Shop, Inc. v. City of Boston*, 652 F.2d 1115, 1125 (1st Cir. 1981) (remanding for factual findings to support city's assertions, stating, "the government bears the burden of proving some empirical

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knowledged that "[t]he case would have present[ed] a different situation had Detroit brought within the ordinance types of theaters that had not been shown to contribute to the deterioration of surrounding areas."

Schad, 452 U.S. at 72 n. 10, 101 S.Ct. at 2184 n. 10 (quoting *Young*, 427 U.S. at 82, 96 S.Ct. at 2458 (Powell, J., concurring)).

basis for the projections on which it relies."); *Avalon Cinema Corp. v. Thompson*, 667 F.2d 659, 661-62 (8th Cir. 1981) (en banc) (contrasting *Young* and requiring city to present evidence to justify its restriction); *Keego Harbor Co. v. City of Keego Harbor*, 657 F.2d 94, 98 (6th Cir. 1981) (reversing because city's post hoc justifications failed to support ordinance).

As in *Kuzinich*, we find Renton's justifications conclusory and speculative. Renton has not studied the effects of adult theaters and applied any such findings to the particular problems or needs of Renton. The studies done by Detroit on the problems of concentrating adult uses are simply not relevant to the concerns of the Renton ordinance—the proximity of adult theaters to certain other uses. We do not say that Renton cannot use the experiences of other cities as part of the relevant evidence upon which to base its actions, but in this case those experiences simply are not sufficient to sustain Renton's burden of showing a significant governmental interest.

B. *Renton Has Not Proved That The Regulation is Unrelated to the Suppression of Speech.*

Renton must prove that its zoning decision was "motivated by a desire to further a compelling governmental interest unrelated to the suppression of free expression." *Tovar v. Billmeyer*, 721 F.2d 1260, 1266 (9th Cir. 1983); *see also Lydo Enterprises v. City of Las Vegas*, 745 F.2d 1211, 1214-1215 (9th Cir. 1984).[15] Both the magistrate and the district court recognized that many of the stated

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[15] In *Lydo Enterprises v. City of Las Vegas*, 745 F.2d 1211 (9th Cir. 1984), the court, citing *Schad*, 452 U.S. at 67-70, 101 S.Ct. at 2181-2184, and *O'Brien*, 391 U.S. at 377, 88 S.Ct. at 1679, reaffirmed that an ordinance that restricts free expression must further "a substantial governmental interest unrelated to the suppression of free expression." 745 F.2d at 1215. In that case, in the context of a preliminary injunction, the court held that the plaintiffs had not developed an adequate record to enjoin enforcement of the ordinance.

reasons for the ordinance were no more than expressions of dislike for the subject matter.[16] The record before us raises at least an inference that a motivating factor behind the ordinance was suppression of the content of the speech as opposed merely to regulating the effects of the mode of that speech. *See Tovar*, 721 F.2d at 1266. The record does not reveal that Renton has rebutted the inference. As discussed above, the City had little empirical evidence before it to demonstrate the alleged deleterious effects of adult theaters.

The district court upheld the ordinance on the ground that Renton's *predominate* concerns were legitimate. But that is not the test in this Circuit. Where mixed motives are apparent, as they are here, *Tovar* requires that the court determine whether "*a motivating factor* in the zoning decision was to restrict plaintiffs' exercise of first amendment rights." *Id.* at 1266 (emphasis added).[17]

Neither the facts before the Renton City Council nor those presented to the district court appear to justify the ordinance's restriction on protected expression. Renton has not shown that it was not motivated by a desire to suppress *speech* based on its content.[18] Given the in-

[16] *See supra* note 3.

[17] The *Tovar* test is consistent with other constitutional cases regarding land use decisions. *See, e.g., Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266, 97 S.Ct. 555, 564, 50 L.Ed.2d 450 (1977) ("[d]etermining whether invidious discriminatory purpose was *a motivating factor* demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available" (emphasis added)).

[18] The recent Supreme Court decision in *Members of City Council v. Taxpayers for Vincent*, —— U.S. ——, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984), upholding an ordinance prohibiting the posting of signs on public property, lends support to the result we reach in this case. In *Vincent*, the ordinance applied to *all* signs, regardless of the content of their message. The court noted there was "no claim that the ordinance was designed to suppress certain ideas that the City finds distasteful." *Id.* 104 S.Ct. at 2126.

ferences raised in the record before us, we remand for reconsideration, particularly in light of *Tovar*.

Renton argues, additionally, that even if it has effectively banned adult theaters, the ordinance is constitutional because similar adult theaters exist in nearby Seattle. The Supreme Court rejected such an argument in *Schad* and we reject it here as well. "'[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place.'" *Schad*, 452 U.S. at 76-77, 101 S.Ct. at 2187 (quoting *Schneider v. New Jersey*, 308 U.S. 147, 163, 60 S.Ct. 146, 151, 84 L.Ed. 155 (1939)).[19]

VI

COSTS AND FEES ON SECOND REMOVAL

In number 83-3980 Renton claims it is entitled to fees under 28 U.S.C. § 1447(c), because the Playtime's second removal was in bad faith.[20] We review the court's finding

[19] In view of our holding, we need not address the overbreadth or vagueness issues raised by Playtime. Playtime also argues that the fact that Renton's ordinance is directed only at adult theatres and not other adult uses is a denial of equal protection. We do not denigrate the validity of this issue, but need not reach it.

[20] The district court's ruling was oral and no written opinion or docket entry was made. Although Fed.R.App.P. 4(a)(2) validates a notice of appeal filed after announcement of a decision or order, it contemplates the entry of a judgment under Fed.R.Civ.P. 58, 79. No such entry was made in this case; thus, under Rule 4(a)(2), the notice of appeal has no date of entry to which to conform.

Nonetheless we conclude that we have jurisdiction over this appeal under *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 98 S.Ct. 1117, 55 L.Ed.2d 357 (1978). In *Bankers Trust*, the Supreme Court held that the parties to an appeal could waive Rule 58's separate judgment requirement when the district court clearly evidenced its intent that its order would represent the final decision in the case and the parties did not object to the absence of a separate judgment. *Id.* at 387-88, 98 S.Ct. at 1121-22. We find those factors present here. The remand order was entered in the docket and no further proceedings could have existed in federal court. Neither

of an absence of bad faith under the clearly erroneous standard. *See Dogherra v. Safeway Stores, Inc.*, 679 F.2d 1293, 1298 (9th Cir.), *cert. denied*, 459 U.S. 990, 103 S.Ct. 346, 74 L.Ed.2d 386 (1982).

Renton stresses that this was the second removal petition, but fails to mention that the first was remanded because the second step of deciding if the case could be removed if it had stated a cause of action. The second removal was on the basis of Renton's amended complaint, which did state a cause of action. This complaint, however, sought enforcement of state laws that had been declared unconstitutional by other courts. Under the circumstances, the district court did not err in finding no bad faith.

VII

CONCLUSION

The City failed to sustain its burden of justifying its ordinance under the test of *United States v. O'Brien*, 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968), as applied in similar cases by the Supreme Court and this court. Accordingly, we reverse and remand case number 83-3805 for proceedings consistent with this opinion.

The district court did not clearly err in denying the City's motion for costs and fees in connection with the second removal. Accordingly, we affirm in case number 83-3980.

AFFIRMED in part, REVERSED in part, and REMANDED.

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party has objected to the lack of a separate judgment here. Although the district court's order in *Bankers Trust* was contained in a written opinion, we do not find that fact controlling except as it bears on the clarity of the court's intent. The transcript of the hearing on the remand leaves no doubt as to the district court's intent. Thus, the oral decision was an appealable order.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. C82-59M

PLAYTIME THEATRES, INC., *et al.*,
Plaintiffs,

v.

CITY OF RENTON, *et al.*,
Defendants.

No. C82-263M
(Remanded)

CITY OF RENTON, *et al.*,
Defendants.

v.

PLAYTIME THEATRES, INC., *et al.*,
Plaintiffs,

[Filed Feb. 18, 1983]

ORDER

INTRODUCTION

On January 11, 1983, the Court entered its order approving and adopting the magistrate's report and recommendation and denying defendants' motions to dismiss and for summary judgment, and granting preliminary injunction *pendente lite*. A separate order was entered January 11, 1983 approving and adopting the magistrate's supplemental report and recommendation and granting the motion to remand Cause No. C82-263M to King County Superior Court.

On February 10, 1983, a hearing was had pursuant to the parties' January 31, 1983 Stipulation and Order separating damages claims from plaintiffs' prayer for permanent injunction and submitting the matter to the Court on the evidence considered by Magistrate Sweigert. The Court has considered the evidence that was before the Magistrate, has considered the parties' memoranda, affidavits and oral arguments. Accordingly, the Court rules that abstention would be improper and plaintiffs' prayer for a permanent injunction must be DENIED.

FEDERAL ABSTENTION

The City of Renton argues that the preliminary injunction was improvidently granted, that the permanent injunction must be denied, and that this Court must abstain and dismiss this action for lack of jurisdiction.

Renton supplements its earlier argument and authorities on this issue with *Miofsky v. Superior Court of State of California, et al.*, in No. 80-4589, slip op. (9th Cir. Jan. 3, 1983). Renton argues that *Miofsky* aids the resolution of the abstention issue herein by refining the meaning of the term "vital state interest" without giving it such overbreadth to deprive the federal court of all of its 42 U.S.C. § 1983 jurisdiction. Renton asserts that the city's interest in establishing zones and setting set backs is a "vital state interest" of the sort that requires

the Court to abstain from acting in the case at bar pending the outcome in State Court on the Complaint for Declaratory Judgment. The *Miofsky* court distinguished the cases cited for abstention:

> In each of these cases, the state or an agent of the state was a party to the proceeding deemed insulated from federal court intervention. In addition, each of these civil suits bore similarities to criminal proceedings or otherwise implicated state interests vital to the operation of state government.

Id. at 7. The context of the *Miofsky* suit was a complaint that state court proceedings violated plaintiff's federally protected rights under Section 1983.

Miofsky does little to refine the term "vital state interests" beyond reasoning that abstention is improper in a Section 1983 civil rights action. The Court is unpersuaded that federal abstention would be proper here. "The state judicial proceeding in this case is purely civil in nature, regardless of the importance of the state policies which the city asserts." Magistrate's Supplemental Report and Recommendation at 5. Although zoning, which is the underlying subject matter of the declaratory judgment's suit in state court, may be an important function performed by a city, this alone does not prevent a federal court from scrutinizing the constitutionality of the city's actions. The Court concludes that the state court action is no bar to continue jurisdiction over plaintiff's suit for injunctive relief.

PERMANENT INJUNCTION

I.

In determining the propriety of a permanent injunction, the Court must first find that there is a threatened violation of a legal right which would produce irreparable harm and for which any other remedy would be

insufficient. The hardship must tip in favor of the plaintiff.

Renton's Ordinance, really a series of three ordinances: 3526, 3629, and 3637, is an attempt to preclude the operation of "adult motion picture theatres" in zones which are within 1,000 feet from certain other specified uses or zones. "Adult motion picture theatres" refers to those theatres exhibiting films characterized by an emphasis on matter relating to "specified sexual activities" or "specified anatomical areas" as a "continuing course of conduct . . . in a manner which appeals to a prurient interest." The subject matter of the films is given a detailed definition, but the "continuing course of conduct" language is not. The ordinance in its essential features is virtually identical to the ordinances in *Young v. American Mini Theatres*, 427 U.S. 50 (1976) and *Northend Cinema, Inc. v. City of Seattle*, 90 Wash. 2d 709, 585 P.2d 1153 (1978) except that the word "used" in describing "adult motion picture theatre" is defined with the "continuing course of conduct" language.

A first amendment interest is affected. The ordinance deals not with obscene material, but sexually explicit material. It is concerned with the exhibition of films inside the theatre and not with "pandering," "the business of purveying textual or graphic matter openly advertised to appeal to the erotic interest of their customers." *Pinkus v. United States*, 436 U.S. 293, 303 (1978).

II.

Since expression protected by the first amendment is the subject of Renton's ordinance, the next inquiry is whether there is actual intrusion upon this first amendment interest and if so, the nature of the intrusion.

There is some intrusion: in certain areas of Renton, films described in the ordinance may not be shown as a continuing course of conduct in a manner which appeals

to a prurient interest. This intrusion is not substantial under the circumstances for several reasons. Renton's restrictions are slightly narrower than those in the cases cited *supra*, because of the "continuing course of conduct" language. No theatre had to be closed under Renton's ordinance, for no theatres were operating or were considering operating when it was enacted. There is no content limitation on the creators of adult movies. The 520 acres of land in all stages of development available for location adult theatres (David R. Clemens Affidavit of May 27, 1982, unrebutted, and his June 23, 1982 testimony at 36-41) belies there being substantial intrusion upon plaintiffs' first amendment right. The real question is whether in spite of the acreage available to plaintiffs to locate a theatre, the economic impact results in a substantial, impermissible effect upon first amendment rights.

Young notes that "the inquiry for first amendment purposes is not concerned with economic impact; rather, it looks only to the effect of this ordinance upon freedom of expression." 427 U.S. at 78 (Powell, J., concurring).

The effect of Renton's ordinance is that plaintiffs or others wishing to exhibit adult film fare and not having a theatre already built and ready for occupancy, must consider whether demand is such that construction of a theatre is feasible. This impact is no different than that upon other land users who must work with what land is available to them in the city. With a large percentage of land within the city available to plaintiffs, the financial feasibility of the various locations is for them to analyze. To conclude otherwise would be to place a burden on the city that Constitutional analysis does not require. Moreover, the message of no individual or group has been silenced. The number of such establishments has not been reduced because none existed and none were attempting to establish themselves in Renton prior to the ordinance. The ordinance merely specifies where adult

theatres may not locate and in doing so, stifles no expression. *See, Young*, 427 U.S. at 81, n.4 (Powell, J., concurring).

The Court concludes that there is not a substantial intrusion upon first amendment interests. Plaintiffs are not virtually excluded from Renton by being confined to the "most unattractive, inaccessible, and inconvenient" areas. *But see Basiardanes v. City of Galveston*, 682 F.2d 1203, 1214 (5th Cir. 1983) Renton's exhibits, affidavits, memoranda, and oral argument persuade the Court that acreage in all stages of development from raw land to developed, industrial, warehouse, office, and shopping space that is criss-crossed by freeways, highways, and roads cannot be so characterized. Significant cited cases to the contrary are distinguishable: *Schad v. Borough of Mount Ephraim*, 452 U.S. 61 (1981) (live entertainment including nude dancing was not a permitted use, and concerns such as trash, police protection, and medical facilities were not sufficient justifications for the exclusion). *Basiardanes* (available sites much less desirable than in Renton, and the zoning ordinance was passed after the theatre was leased for showing adult films); *Avalon Cinema Corporation v. Thompson*, 667 F.2d 659 (8th Cir. 1981) (zoning ordinance enacted after suggested adult use); *Keego Harbor Co. v. of Keego Harbor*, 657 F.2d 94 (6th Cir. 1981) [*sic*] (no location within city that was *not* within 500 feet of a bar or other regulated use). Ample, accessible real estate is available for the location of adult theatres in Renton.

III.

The insubstantial intrusion upon first amendment interests by Renton's ordinance must be considered against the governmental interest which led to its enactment. Under the four-part test of *United States v. O'Brien*, 391 U.S. 367, 377 (1968), a governmental regulation is justified despite incidental impact upon first amendment interests

1. If it is within the constitutional power of the government,

2. If it furthers an important or substantial governmental interest,

3. If the governmental interest is unrelated to the suppression of free expression, and

4. If the governmental restriction is no greater than necessary for the furtherance of that interest.

As in *Young*, the first two elements of the test are met. The ordinance was within the City of Renton's power to enact. Nor is there any doubt that the interests sought to be furthered by this ordinance are important and substantial.

> Without stable neighborhoods, both residential and commercial, large sections of a modern city quickly can deteriorate into an urban jungle with tragic consequences to social, environmental, and economic values. While I agree with respondents that no aspect of the police power enjoys immunity from searching constitutional scrutiny, it also is undeniable that zoning, when used to preserve the character of specific areas of a city, is perhaps "the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life." *Village of Belle Terre v. Boraas*, 416 U.S., at 13 (Marshall, J., dissenting).

Young, 427 U.S. at 80 (Powell, J., concurring). The critical inquiries are whether these interests are *furthered* by the ordinance and whether the governmental interest is unrelated to the suppression of free expression, element three.

Renton's interests, articulated in the ordinance, "in protecting and preserving the quality of its neighborhoods, commercial districts, and the quality of urban life through effective land use planning," are furthered by the ordinance. The ordinance states in item 14, p. 3, Nos. 3629 and 3637:

> 14. Experience in numerous other cities, including Seattle, Tacoma and Detroit, Michigan, has shown that location of adult entertainment land uses degrade the quality of the areas of the City in which they are located and cause a blighting effect upon the city. The skid row [sic] effect, which is evident in certain parts of Seattle and other cities, will have a significantly larger affect upon the City of Renton than other major cities due to the relative sizes of the cities.

There was no evidence adduced to show that the secondary effects of adult land uses would be different or lesser in Renton than in Seattle, Tacoma, or Detroit. Certainly, Renton must justify its ordinance, but in so doing, experiences of other cities and towns must constitute some evidence to the legislative body considering courses of action. *Genusa v. City of Peoria*, 619 F.2d 1203, 1211 (7th Cir. 1980). If the goal of preservation of the quality of urban life is to have any meaning, a city need not await deterioration in order to act. *Id.* The observed effects in nearby cities provides persuasive circumstantial evidence of the undesirable secondary effects Renton seeks to preclude from within 1,000 feet of residential zones, schools, religious facilities, and public parks. Although the effects in other cities are starkly shown when adult uses are congregated, Renton need not await such congregation. Similarly, no negative inference can be drawn from Renton's choosing to address only one form of "adult" usage. It's [*sic*] effort would have been bolstered by considering other "adult" uses in view of other cities' experiences, but inclusion of these other

"adult" uses is not mandatory. The city being aware that it is treading in a delicate area between valued interests might understandably be loath to tackle the description, restriction, and rationale of more than one such usage at a time. "[T]he city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." *Young*, 427 U.S. at 71.

The governmental interest is unrelated to the suppression of free expression, and the third element is satisfied. Concern with preventing undesirable secondary effects is not the kind of apprehension aimed at regulating the content of an adult theatre's exhibitions. Rather, it is a permissible classification based on deleterious secondary effects. *Young*, 427 U.S. at 70, 71.

Renton solicited testimony through its City Council and the Council's Planning and Development Committee. It summarized some ideas put forth at those public meetings in its ordinance. Predictably, some citizens expressed concerns reflecting their values which might be impermissible bases for justification of restrictions affecting first amendment interests. *See, e.g., Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975) (overbroad effort to protect privacy interests of certain citizens from "offensive" speech—nude movie fare visible from public street). The inclusion of these statements should not negate the legitimate, predominate concerns of the City Council nor lessen the value of the circumstantial evidence of adult land uses' effects in nearby cities. Arguably, some of the statements may be construed as characterizations of the community's quality of life that is presently sought to be preserved. Citizens' judgments as to a city's quality of life is [*sic*] necessarily subjective. It is necessary to separate these subjective characterizations of the city's quality of life from the goals of protecting and preserving it and the evidence that the means will further the end. Renton could have written its ordinance

in such a way as to better distinguish these aspects of the problem, but this is not a material consideration.

Finally, part four of the *O'Brien* test is satisfied for the restriction is no greater than necessary to further the governmental interest. The 1,000-foot aspect of the restriction does not preclude adult theatres from locating anywhere in the city as in *Keego Harbor*. Renton's ordinance is similar to others that have been upheld except for the "continuing course of conduct" language discussed earlier which has some narrowing effect.

Renton's effort to preserve the quality of its urban life by enacting an ordinance which regulates adult theatre location is minimally intrusive of a particular category of protected expression described in *Young* as being of "a lesser magnitude than the interest in untrammeled political debate." 427 U.S. at 70. Renton's effort under the circumstances is not unconstitutional under the first amendment. Injunctive relief from enforcement of the ordinance would be improper. NOW, THEREFORE,

For the foregoing reasons, the Court having reconsidered its de novo review which led to the entry of the preliminary injunction, the order granting preliminary injunction must be vacated as improvidently granted, and plaintiffs' prayer for permanent injunction against enforcement of the ordinance is DENIED. Accordingly, the City of Renton's Motion to Dismiss for Lack of Jurisdiction is DENIED, and its Motion for Summary Judgment is GRANTED.

SO ORDERED.

DATED this 17th day of February, 1983.

/s/ Walter T. McGovern
WALTER T. MCGOVERN
Chief
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

Civil Action Docket No. C82-59M

PLAYTIME THEATRES, INC., *et al.*

vs.

CITY OF RENTON, *et al.*

JUDGMENT

This action came on for (hearing) before the court, United States District Judge Walter T. McGovern presiding. The issues having been duly (heard) and a decision having been duly rendered, it is ordered and adjudged that plaintiffs' prayer for permanent injunction is DENIED, City of Renton's motion to dismiss for lack of jurisdiction is DENIED and City of Renton's motion for summary judgment is GRANTED.

[Filed Feb. 18, 1983]

Dated at: Seattle, Washington

Date: 18 February 1983

/s/ [Illegible]
For the Court

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. C82-59M

PLAYTIME THEATERS, INC.,
a Washington corporation, *et al.*,
Plaintiffs,
v.
THE CITY OF RENTON, *et al.*,
Defendants.

[Filed Apr. 29, 1983]

ORDER DENYING PLAINTIFF'S MOTIONS TO ALTER AND AMEND JUDGMENT AND FOR STAY PENDING APPEAL

THE COURT having considered all the material relevant to Plaintiff's motions to alter and amend judgment and for stay pending appeal, including the parties' briefs, concludes that its judgment should remain as earlier entered. NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff's Motion to Alter and Amend Judgment is DENIED, and its Motion for a Stay Pending Appeal is DENIED.

DATED this 29th day of April, 1983.

/s/ Walter T. McGovern
WALTER T. McGOVERN
Chief
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. C82-59M

PLAYTIME THEATRES, INC., *et al.*,
Plaintiffs,
v.
CITY OF RENTON, *et al.*,
Defendants.

Case No. C82-263M

CITY OF RENTON, *et al.*,
Plaintiffs,
v.
PLAYTIME THEATRES, INC., *et al.*,
Defendants.

[Filed Jan. 13, 1983]

ORDER DENYING DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT AND GRANTING PRELIMINARY INJUNCTION PENDENTE LITE

The Court, having considered plaintiffs' motion for preliminary injunction, defendants' renewed motion to dismiss and motion for summary judgment, the Report and Recommendation of United States Magistrate Philip K. Sweigert, and the balance of the records and files herein, does hereby find and ORDER:

(1) Said Report and Recommendation is hereby approved and adopted;

(2) Defendants' motion for summary judgment and renewed motion to dismiss and [*sic*] hereby DENIED;

(3) Defendant City of Renton, its officers, agents, servants, employees, successors, attorneys, and all those in active concert or participation with them, are enjoined from enforcing City of Renton Ordinance No. 3637 against plaintiffs, said preliminary injunction to remain in effect pending a decision by this Court on the merits and until further order of the Court; and,

(4) The Clerk of Court is to direct copies of this Order to all counsel of record and to Magistrate Sweigert.

DATED this 11th day of January, 1983.

/s/ Walter T. McGovern
Chief
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. C82-59M

PLAYTIME THEATRES, INC., *et al.*,
Plaintiffs,

v.

CITY OF RENTON, *et al.*,
Defendants.

Case No. C82-263M

CITY OF RENTON, *et al.*,
Plaintiffs,

v.

PLAYTIME THEATRES, INC., *et al.*,
Defendants.

REPORT AND RECOMMENDATION

INTRODUCTION AND SUMMARY CONCLUSION

On February 23, 1982, the Court, approving and adopting a Report and Recommendation filed February 3, 1982 (Dkt. #22), entered an order denying plaintiffs' motion for temporary restraining order (Dkt. #39).

Three motions are presently before the Court: First, plaintiffs' motion for preliminary injunction, second, defendants' renewed motion to dismiss, and, third, defendants' motion for summary judgment. At a hearing conducted on June 23, 1982, the undersigned heard oral testimony, received documentary evidence, and heard the arguments of counsel with respect to all three motions. Based thereon and upon the affidavits and the balance of the record before me, and for the reasons set forth herein in some detail, I conclude that plaintiffs have established both a clear likelihood of success on the merits and irreparable injury. I recommend that the Court enjoin enforcement of Renton's zoning ordinance dealing with adult theatres. I also, of course, recommend denial of defendants' dismissal and summary judgment motions.

THE RECORD BEFORE THE COURT

(A) *The Ordinances.*

In April of 1981, the City of Renton enacted Ordinance No. 3526 providing that adult motion picture theatres as defined therein were prohibited:

(1) Within or within 1,000 feet of any residential zone or single family or multiple family use;

(2) Within one mile of any public or private school;

(3) Within 1,000 feet of any church or other religious facility or institution; and,

(4) Within 1,000 feet of any public park or P-I zone.

Early in 1982, plaintiffs acquired two existing theatre buildings in the City of Renton. It was their intention to show feature length sexually explicit adult films in one of them. The theatre buildings, however, were located in an area proscribed by Ordinance No. 3526, prompting plaintiffs to commence the present action seeking damages and an injunction prohibiting enforcement of the ordinance on due process, First Amendment, and equal protection grounds. Their principle contentions are that the City of Renton failed to factually support a sufficient governmental interest justifying intrusion upon protected speech and that the ordinance was not a mere locational restriction but a virtual prohibition of adult theatres in the City of Renton.

While the case was pending, more specifically in May, 1982, defendant City of Renton enacted Ordinance No. 3629, which amended Ordinance No. 3526. The principle changes were:

(1) The amending ordinance contained an elaborate statement of the reasons for enacting both Ordinance No. 3526 and Ordinance No. 3629;

(2) A definition of the word "used" was added;

(3) Violation of the use provisions of the ordinance was declared to be a nuisance *per se* to be abated civilly and not by criminal enforcement;

(4) The required distance of an adult theatre from a school was reduced from one mile to 1,000 feet; and,

(5) A severability clause was added.

The amending ordinance, No. 3629, also contained an emergency clause and was to be effective as of the date of its passage and approval by the mayor, May 3, 1982.

On June 14, 1982, defendants passed yet a third ordinance, No. 3637, which was identical to Ordinance No. 3629 in all respects except that the emergency clause was deleted and the ordinance was to become effective thirty days following its publication.

While plaintiffs argue that the only ordinance before the Court is No. 3526, they are clearly incorrect. Their

request for injunctive relief obligates the Court to consider any and all changes in the applicable zoning scheme to the date of its ruling.

(B) *Events Leading to Passage of the Ordinances.*

The City of Renton presently has no theatres which exhibit sexually explicit adult films. It appears that in May of 1980, at the suggestion of a City of Renton hearing examiner, the mayor suggested to the City Council that they consider the advisability of passing zoning legislation dealing with adult entertainment uses, specifically "adult theatre[s], bookstore[s], film and/or novelty shop[s]" prior to the time any such businesses might seek to locate in the city. The mayor's memorandum suggested that some cities had experienced difficulties in "re-doing" their zoning ordinances once such uses were established in the community.

On March 5, 1981, the Planning and Developing Committee of the Council held a meeting for the purpose of taking public testimony on the subject. While there is no record of that meeting, Mr. Clemens, then the City's acting Planning Director who was present at the meeting, testified that the Superintendent of Schools, and the President of the Renton Chamber of Commerce spoke to concerns about adverse affects which adult entertainment uses would have upon the economic health of Renton's businesses and upon children going to and from school. He also testified that other citizens spoke generally about the adverse affects of such uses. Mr. Clemens further testified that he and his department reviewed the decisions of the Washington State Supreme Court in *Northend Cinemas* v. *Seattle*, 90 Wn. 2d, 709, and of the United States Supreme Court in *Young* v. *American Mini Theatres*, 427 U.S. 50 (1976), and presented the information from their review to the Planning and Development Committee. He indicated generally that review of those cases

indicated that adult entertainment uses tend to decrease proprty values and increase crime.

On April 6, 1981, the Planning and Development Committee of the Council recommended that an appropriate zoning ordinance be written to reflect the following conditions:

> "(a) No adult motion picture theatre will be allowed in an area used or zoned residential or in any P-I public use area.
>
> "(b) A suitable buffer strip of 1,000 feet from any residential or P-I area also be a banned area;
>
> "(c) The area enclosed in a one mile radius of any school (this is the minimum student walking distance) would also be a banned area."

Ordinance No. 3526 was the result.

(C) *The Effect of the Ordinance.*

While the record would indicate that there are some 200 acres of property within the city limits of Renton where an adult theatre might conceivably locate, the testimony and affidavits show that, with but one exception, none of that property would be suitable for the location of a theatre. The area is largely undeveloped and what development there is is entirely unsuitable for retail purposes in general and for theatre purposes in particular. The developed areas include:

(1) A Metro sewage disposal site and treatment plant;

(2) Longacres Racetrack and environs;

(3) A business park containing buildings suitable only for industrial use;

(4) Warehouse and manufacturing facilities;

(5) A Mobile Oil tank farm; and,

(6) A fully developed shopping center.

The entire area potentially available for the location of an adult theatre is far distant from the downtown business district, not well lit during night time hours, and also generally devoid of pedestrian and vehicular traffic during such hours.

The two sites which are potentially suitable are fully developed and occupied by fast food restaurants.

DISCUSSION

As indicated in my prior Report and Recommendation, the party requesting injunctive relief must clearly show either: (1) probable success on the merits and possible irreparable injury, or (2) sufficient serious questions as to the merits to make them a fair ground for litigation and a balance of hardship tipping decidedly in favor of the party seeking relief. *Los Angeles Memorial Coliseum Commission* v. *N.F.L.*, 634 F. 2d 1197 (9th Cir. 1980). I conclude that plaintiffs meet the foregoing test.

(1) *Probability of Success on the Merits.*

A city's authority to zone is a well recognized aspect of the police power. But when a zoning ordinance infringes upon speech protected by the First Amendment, it must be narrowly drawn to further a substantial government interest. *Schad* v. *Borough of Mt. Ephraim*, 452 U.S. 61 (1981); *Kuzinich* v. *County of Santa Clara*, —— F. 2d ——, No. 81-4460 Ninth Circuit slip op. October 12, 1982. The City of Renton's zoning ordinance relating to adult theatres plainly implicates First Amendment rights. It is not limited to motion picture theatres catering to those with an appetite for obscene films falling outside the protections of the First Amendment, *Miller* v. *California*, 413 U.S. 15 (1973). Rather, patterned upon the

ordinance approved in *Young* v. *American Mini Theatres*, 427 U.S. 50 (1976), it regulates sexually explicit but nonobscene films as well.

Defendant City of Renton contends, however, that no First Amendment rights are involved because the ordinance only regulates the time, place, and manner of the operation of adult theatres. It relies on *American Mini Theatres*, *supra*. However, I believe the ordinance in *American Mini Theatres* is clearly distinguishable. The ordinance in the instant case, for all practical purposes, excludes adult theatres from the City of Renton and therefore greatly restricts access to lawful speech. The ordinance approved in *American Mini Theatres* had no such effect.

Defendants contend that the City has provided an area within which adult theatres may locate. However, while in theory such area is available, in fact, the area is entirely unsuited to movie theatre use. Restricting adult theatres to the most unattractive, inaccessable, and inconvenient areas of the city has the effect of suppressing or greatly restricting access to lawful speech. *American Mini Theatres*, *supra*, 427 U.S. at 71 n. 35. See *Basiardanes* v. *City of Galveston*, 682 F. 2d 1203 (5th Cir. 1982); *Avalon Cinema Corporation* v. *Thompson*, 667 F. 2d 659 (18th Cir. 1981); *Keego Harbor Co.* v. *City of Keego Harbor*, 657 F. 2d 94 (6th Cir. 1981); *Alexander* v. *City of Minneapolis*, 531 F. Supp. 1162 (N.D. Minn. 1982); *Purple Onion, Inc.* v. *Jackson*, 511 F. Supp. 1207 (N.D. Ga. 1981); *Bayside Enterprises, Inc.* v. *Carson*, 450 F. Supp. 696 (M.D. Fla. 1978); *E & B Enterprises* v. *City of University Park*, 449 F. Supp. 695 (N.D. Tex. 1977); cf. *Deerfield Medical Center* v. *City of Deerfield Beach*, 661 F. 2d 328 (5th Cir. 1981).

Because the Renton ordinance drastically impairs the availability in Renton of films protected for adult viewing by the First Amendment, it must be reviewed under the stringent standards of *Schad*, *supra*. *Schad* directs

the court to examine the strength and legitimacy of the governmental interest behind the ordinance and the precision with which it is drawn. Unless the governmental interest is significant and is advanced without undue restraint on speech, the ordinance is invalid. *Schad*, 452 U.S. at 70.

The City of Renton has asserted that it has a substantial governmental interest in zoning restrictions which will prevent deterioration of its neighborhoods and its dowrtown areas. But it is not sufficient to assert such interest. The City must establish a factual basis for its asserted reasons and that it considered those facts in passing the ordinance. Those reasons must be unrelated to the suppression of free expression. *United States* v. *O'Brien*, 391 U.S. 367 (1968); *Kuzinich* v. *County of Santa Clara, supra.*

Many of the conclusory statements of the reasons for enacting the Renton ordinances reflect simple distaste for adult theatres because of the content of the films shown. Those statements directed at legitimate fears such as prevention of crime and deterioration of business and residential neighborhoods are based principally upon the Planning Departments review of other court cases in which zoning legislation regulating the location of adult businesses has been approved. The City had little or no empirical evidence before it when the initial ordinance was passed. More is required. *Avalon Cinema Corporation* v. *Thompson, supra*; *Keego Harbor Co.* v. *City of Keego Harbor, supra*; *Basiardanes* v. *City of Galveston, supra.* I conclude that the manner in which the ordinance was enacted, its narrow focus on adult theatres to the exclusion of other adult entertainment uses which would presumably contribute to the same concerns, and the fact that most of the findings set forth in the amendatory ordinance reflect citizen distaste for adult theatres because of the film fare shown, suggests an improper motive.

Even assuming that the City has established a substantial governmental interest, however, the ordinance will not pass constitutional muster. The ordinance must be narrowly drawn to serve that interest with only a minimum intrusion upon First Amendment freedoms. *Schad, supra.* Here the intrusion upon First Amendment expression is not minimal. Adult theatres are, for all practical purposes, excluded from the City of Renton. The ordinance constitutes a prior restraint on speech and should be held to be unconstitutional.

(2) *Irreparable Injury.*

Irreparable injury is clear. Plaintiffs may not exhibit sexually explicit adult films without being subjected to civil abatement proceedings. The loss of First Amendment freedoms for even minimal periods of time unquestionably constitutes irreparable injury in the context of a suit for injunctive relief. *Elrod* v. *Burns*, 427 U.S. 373 (1976); *Deerfield Medical Center* v. *City of Deerfield Beach, supra*; *Citizens for a Better Environment* v. *City of Park Ridge*, 567 F. 2d 689 (7th Cir. 1975).

I recommend that the Court enjoin enforcement of City of Renton Ordinance No. 3637 pending disposition on the merits. A proposed form of Order accompanies this Report and Recommendation.

DATED this 5th day of November, 1982.

/s/ PHILIP K. SWEIGERT
United States Magistrate

APPENDIX G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

No. C82-59M

PLAYTIME THEATRES, INC.,
a Washington corporation,
and
KUKIO BAY PROPERTIES, INC.,
a Washington corporation,
Plaintiffs,

v.

THE CITY OF RENTON, *et al.*,
Defendants.

[Filed Feb. 23, 1982]

ORDER

THIS MATTER came on to be heard before the undersigned judge of the above-entitled Court upon plaintiffs' objections to the February 3, 1982 Report and Recommendation of United States Magistrate Philip K. Sweigert in the above-entitled cause. That Report and Recommendation is on file herein.

This Order is based upon the complete record and files herein, including but not being limited to the affidavits of Gary F. Kohlwes, David R. Clemens and Jack R. Burns, together with a transcript of the testimony of David R. Clemens produced before said U.S. Magistrate on January 29, 1982.

Having considered de novo each and all of the foregoing, together with plaintiff's Motion for a Temporary Restraining Order, the response thereto and the Reports and Recommendation of the United States Magistrate, now, therefore, it is hereby ORDERED

(1) Said Report and Recommendation is hereby approved and adopted;

(2) Plaintiffs' Motion for Temporary Restraining Order is hereby DENIED; and,

(3) The Clerk is to direct copies of this Order to all counsel of record and to Magistrate Sweigert.

DATED this 23rd day of February, 1982.

/s/ Walter T. McGovern
WALTER T. MCGOVERN
Chief
United States District Judge

APPENDIX H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No. C82-59M

PLAYTIME THEATRES, INC., *et al.*
Plaintiffs,

v.

THE CITY OF RENTON, *et al.*,
Defendants.

[Filed Feb. 23, 1982]

JUDGMENT

This matter having come on for consideration before the Court, Honorable Walter T. McGovern, Chief United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, adopting and approving report and recommendation of the Magistrate and denying plaintiffs' motion for Temporary Restraining Order,

IT IS HEREBY ORDERED AND ADJUDGED, that plaintiffs' motion for a Temporary Restraining Order is hereby DENIED.

DATED this 23rd day of February, 1982.

/s/ John A. McLellan
Deputy
United States District Clerk

APPENDIX I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Case No. C82-59M

PLAYTIME THEATRES, INC.,
a Washington corporation,

and

KUKIO BAY PROPERTIES, INC.,
a Washington corporation,

v. *Plaintiffs,*

THE CITY OF RENTON, *et al.*,
Defendants.

REPORT AND RECOMMENDATION

INTRODUCTION AND SUMMARY CONCLUSION

Plaintiffs, Playtime Theatres, Inc., and Kukio Bay Properties, Inc., recently acquired two existing theatre buildings in the City of Renton and wish to commence showing feature length sexually explicit adult films in one of them. The theatre buildings are located in areas not zoned for such use. Plaintiffs filed the instant suit claiming that the Renton zoning ordinance in question is unconstitutional for a number of reasons. Because plaintiffs wished to commence showing the adult films on Friday, January 29, 1981, they sought a temporary restraining order prohibiting the City of Renton from enforcing its ordinance. The matter was referred to me by Order of

Reference dated January 22, 1982, and a hearing was held on January 29, 1982. Having heard the arguments of counsel and considering the affidavits and limited testimony and documentary exhibits admitted at that hearing, I recommend that the Court deny the request for a temporary restraining order for the reasons hereinafter set forth.

DISCUSSION

In this Circuit, the party requesting injunctive relief must clearly show either: (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions as to the merits to make them a fair ground for litigation and a balance of hardship tipping decidedly in favor of the party seeking relief. *Los Angeles Memorial Coliseum Commission* v. *N.F.L.*, 634 F. 2d 1197 (9th Cir. 1980). Further, federal courts should proceed with caution and restraint when considering a facial challenge to the constitutionality of an ordinance. *Erznoznik* v. *City of Jacksonville*, 422 U.S. 205 (1975). Finally, the Court must also bear in mind that a temporary restraining order is ordinarily for the purpose of maintaining the last uncontested status quo between the parties until full hearing of an application for preliminary injunction can take place.

The ordinance in question provides that adult motion picture theatres as defined therein are prohibited:

(1) Within or within 1000 feet of any residential zone or single family or multiple family use;

(2) Within one mile of any public or private school;

(3) Within 1000 feet of any church or other religious facility or institution; and

(4) Within 1000 feet of any public park or P-I zone.

Plaintiffs' complaint challenges the constitutionality of the ordinance on the following grounds: First, they claim

that certain definitional sections are so vague and overbroad as to deny them due process. Second, they claim that confinement of adult theatres to certain areas is an impermissible prior restraint on protected First Amendment speech. Third, they argue the classification of theatres based on the content of the films shown violates First Amendment and equal protection guarantees. Plaintiffs did not pursue their vagueness or overbreadth arguments at the hearing or in their brief but focused only on the First Amendment and equal protection claims.

Defendants contend that the ordinance is not facially invalid for vagueness or overbreadth but is a reasonable regulation of the place in which "adult motion picture theatres" may be located within Renton and has only an incidental effect upon exercise of First Amendment rights. Defendants rely principally on *Young* v. *American Mini Theatres, Inc.*, 427 U.S. 50, 49 L.Ed. 2d 310 (1976), *rehearing denied*, 429 U.S. 873 (1976) (hereinafter referred to as *Young*).

In *Young*, the Supreme Court approved the creation and definition of an adult theatre zoning use in the City of Detroit which was clearly identical to the Renton zoning use at least in its definitional provisions. The Court also approved regulation of location of that use. The Court reasoned that since the ordinance only controlled the location of adult businesses and did not restrict the content of the speech disseminated therein, it was merely a time, place, or manner restriction. *Id.* at 63, 71. The Court held that the City had a strong governmental interest in protecting the quality of its neighborhoods, *Id.* at 71, 72, which justified the zoning scheme which classified businesses on the content of their material, and treated adult businesses (including theatres) different from other businesses.

The Court indicated in *Young*, however, that the "situation would have been quite different if the ordinance

had the effect of suppressing, or greatly restricting access to, lawful speech." *Id.* at 71 n. 35. Accordingly, the critical inquiry is the "effect" the ordinance's limitations have on the exercise of First Amendment rights.

In their affidavits and through the limited testimony and exhibits admitted at the hearing, plaintiffs have attempted to distinguish the Renton ordinance from that approved in *Young* in two respects: First, they contend that the City of Renton failed to factually support its conclusion that adult movie theatres have an adverse effect on residential neighborhoods including incidental amenities close thereto such as parks, churchs, and schools—thus the city established no important state interests justifying its intrusion upon protected speech. Second, plaintiffs attempted to show that rather than a mere locational restriction, the Renton ordinance amounts to a virtual prohibition of adult theatres in that city—that even though there may be property available, it is not commercially feasible. I will address these contentions separately.

(1) *Basis for the City's Ordinance.*

The affidavit submitted by Mr. Clemens, the Policy Development Director of the City of Renton, and his testimony at the hearing, indicated that the ordinance in question was only adopted after a period of study and following public hearings at which the City Council heard testimony indicating that adult entertainment land uses would have an adverse affect on property values within the business and residential areas of the city. He also indicated that he had reviewed a summary of the findings and conclusions made when Seattle enacted a similar ordinance—those findings noted the deterioration of business and community neighborhoods where adult entertainment uses are permitted. Those findings prompted Seattle to enact an ordinance restricting adult entertainment uses to one specific area of the city. Plaintiffs contend that the city heard no expert testimony and that

they cannot rely on the Seattle experience. I disagree. There is no reason to require that Renton receive expert testimony to show what has been shown to be generally experienced elsewhere. See *Genusa* v. *City of Peoria*, 619 F. 2d 1203 (7th Cir. 1980).

(2) *Whether the Ordinance Suppresses or Greatly Restricts Access to Adult Fare.*

After reviewing the maps and affidavits, and hearing the testimony of Mr. Clemens, I conclude that although some of the approximately 400 acres which the city asserts is available for the location of adult entertainment uses is definitely not available, and although much of it is not ideal, the record at this stage of the proceeding would indicate that there are many adequate sites available. Plaintiffs' argument that such sites are not economically practicable is not relevant. The constraints of the ordinance may create economic hardship or loss for those who engage in the adult entertainment business, but that was also true in *Young*. See Justice Powell's concurring opinion at 78. The First Amendment inquiry is not concerned with economic impact but only the effect upon freedom of expression. All that is required is that those who wish to exhibit sexually explicit films be given ample area to do so, and that those who seek to view them be given access. The City of Renton appears to have provided ample area.

CONCLUSION

Applying the standards applicable in this Circuit to a motion for injunctive relief, I conclude that although there is some possibility of per se irreparable injury because plaintiffs are prevented from showing films arguably protected under the First Amendment, plaintiffs have not clearly established a probability that they will succeed on the merits. Rather, it appears that the case is

controlled by *Young* and that the ordinance only incidentally affects protected speech or expression.

As to the alternate test, I conclude that although the allegations in plaintiffs' complaint are sufficiently serious to be fair grounds for litigation, the balance of hardships does not tip decidedly in plaintiffs' favor. Although plaintiffs will not be able to show the sexually explicit films they desire to show unless and until this matter is concluded in their favor, they may continue to exhibit other films. The hardship upon them is no more severe than the general hardship imposed upon the one who desires to use a particular piece of property in a manner incompatible with its zoning. Weighed against this impact is the city's strong interest in assuring compliance with its zoning laws.

A proposed form of Order accompanies this Report and Recommendation.

DATED this 3d day of February, 1982.

/s/ Philip K. Sweigert
PHILIP K. SWEIGERT
United States Magistrate

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 83-3805

D.C. No. C-82-59M

PLAYTIME THEATRES, INC.,
a Washington corporation, *et al.*,
Plaintiffs/Appellants,

vs

THE CITY OF RENTON, *et al.*,
Defendants/Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that the City of Renton, the Appellee above named, hereby appeals to the Supreme Court of the United States from the judgment entered in this action on November 28, 1984.

This appeal is taken pursuant to 28 U.S.C. 1254 (2).

DATED this 4th day of February 1985.

/s/ Daniel Kellogg
DANIEL KELLOGG
Attorney for City of
Renton, et al.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 83-3805

D.C. No. C-82-59M

PLAYTIME THEATRES, INC.,
a Washington corporation, *et al.*,
Plaintiffs/Appellants,

vs

THE CITY OF RENTON, *et al.*,
Defendants/Appellees.

CERTIFICATE OF SERVICE

I certify that a copy of the Notice of Appeal to the Supreme Court of the United States was served on the parties to this action on February 4, 1985, by mailing copies, postage prepaid, to them at the following addresses:

Jack R. Burns
10940 N.E. 33rd Pl., Suite 107
Bellevue, Washington 98004

Robert E. Smith
16133 Ventura Blvd., Suite 1230
Encino, California 91436

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Daniel Kellogg
DANIEL KELLOGG

APPENDIX K

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

No. C82-59M

PLAYTIME THEATRES, INC.,
a Washington corporation,

and

KUKIO BAY PROPERTIES, INC.,
a Washington corporation,
Plaintiffs,

vs.

THE CITY OF RENTON,

and

THE HONORABLE BARBARA Y. SHINPOCH,
as Mayor of the City of Renton,

and

EARL CLYMER, ROBERT HUGHES, NANCY MATHEWS, JOHN REED, RANDY ROCKHILL, RICHARD STREDICKE AND TOM TRIMM, as members of the City Council of the City of Renton; serve on: DELORES H. MEAD, City Clerk.

and

JIM BOURASA, as acting Chief of
Police of the City of Renton,
Defendants, jointly and severally, in their representative capacities only.

AMENDED AND SUPPLEMENTAL COMPLAINT
FOR DECLARATORY JUDGMENT AND
PRELIMINARY AND PERMANENT INJUNCTION

COME NOW Playtime Theatres Inc. and Kukio Bay Properties Inc., bodies corporate of the State of Washing-

ton, by and through their attorneys, Jack R. Burns and Robert Eugene Smith, of counsel, and seek a declaratory judgment as well as a preliminary and permanent injunction with respect to City of Renton Ordinance *No. 3526* entitled: "An Ordinance Of The City Of Renton, Washington, Relating To Land Use and Zoning;" enacted and approved by the Mayor and City Council on or about the 13th day of April, 1981 and in support of their cause of action, state:

I. JURISDICTION

1. This is a civil action whereby plaintiffs pray for a preliminary and permanent injunction enjoining the defendants from enforcement of the City of Renton Ordinance *No. 3526*, a copy of which is attached hereto as *Exhibit "A"* in support of this complaint, the contents of which are incorporated herein by reference, on the grounds that said ordinance and the multiple provisions thereof are unconstitutional as written, and/or as threatened to be applied to the plaintiffs in the case at bar. Further, plaintiffs pray for a declaratory judgment to determine the constitutionality of said Ordinance, as written and/or as threatened to be applied to the plaintiffs. The allegations to be set forth in the premises establish that there are presented questions of actual controversy between the parties involving substantial constitutional issues in that said ordinance, as written and/or in its threatened application, is repugnant to the rights of the plaintiffs herein under the *First, Fourth, Fifth, Sixth,* and *Fourteenth* Amendments to the Constitution of the United States.

2. Jurisdiction is conferred on this court for the resolution of the substantial constitutional questions presented by the provisions of 28 USCA § 1131(a) which provides in pertinent part:

> (a) The district court shall have original jurisdiction of all civil actions wherein the matter in controversy

> exceeds the sum or value of $10,000.00, exclusive of interest and costs, and arises under the Constitution laws or treaties of the United States.

as well as 28 USCA § 1343(3) which provides in pertinent part that the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

> To redress the deprivation, under color of any any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States . . ."

and the organic law which further authorizes the institution of this suit founded on 42 USCA § 1983, which provides in pertinent part as follows:

> Every person who, under color of any statute, ordinance, custom or usage, of any state or territory subjects, or causes to be subjected, any person of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and the laws, shall be liable to the party injured in an action at law, sued in equity, or other proper proceeding for redress.

Plaintiffs' prayer for declaratory relief is founded on *Rule 57* of the *Federal Rules of Civil Procedure*, as well as 28 USCA § 2201, which provides in pertinent part:

> . . . Any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declarations, whether or not further relief is or could be sought . . .

The jurisdiction of this court to grant injunctive relief is conferred by 28 USCA § 2202, which provides:

> Further necessary or proper relief based upon a declaratory judgment or decree may be granted after

reasonable notice and hearing against any adverse party whose rights have been determined by such judgment.

II. PARTIES

3. Playtime Theatres, Inc., a corporate body of the State of Washington plans to operate pursuant to a written lease agreement, a motion picture theatre which is located at 504 South 3rd Street, within the city limits of Renton, State of Washington. The enterprise will be operated under the name of the Roxy Theatre. Playtime Theatres, Inc. will also operate pursuant to a written lease agreement, the Renton Theatre at 507 South 3rd Street, within the city limits of Renton, State of Washington.

Kukio Bay Properties, Inc., a body corporate of the State of Washington has purchased the motion picture theatres described in the preceeding paragraph and has leased said theatres to Playtime Theatres, Inc.

That on January 26, 1982, Kukio Bay Properties, Inc. purchased of said theatres for the sum of $800,000.00. That immediately thereafter, Kukio Bay Properties, Inc. took possession of said theatres. That on or about the 27th day of January, 1982, by a written agreement, Kukio Bay Properties, Inc. leased said theatre premises to Playtime Theatres, Inc. for a period of ten years commencing on January 27, 1982. In addition, Playtime Theatres, Inc. will have the option to renew said leases for an additional term of ten years terminating on January 26, 2002. The lease agreements to be entered into by the parties provide that the premises by [*sic*] used for the purpose of conducting therein adult motion picture theatres. Playtime Theatres, Inc. took possession of said theatres on or about January 27, 1982 and on January 29, 1982 planned to begin exhibiting feature length motion picture films for adult audiences.

From on or about January 29, 1982, under the operation and management of Playtime Theatres, Inc., one of said theatres would continuously operate exhibiting adult motion picture film fare to an adult public audience but for the threats of the defendants to enforce their wholly unconstitutional zoning ordinance.

4. The defendant, City of Renton, is a municipal corporation of the State of Washington.

5. The Honorable Barbara Y. Shinpoch is named defendant herein in her capacity as Mayor of the City of Renton, having the titular title. In that capacity, she is the head of City government and approved the questioned ordinance in the case at bar.

6. Earl Clymer, Robert Hughes, Nancy Mathews, John Reed, Randy Rockhill, Richard Stredicke and Tom Trimm are named as defendants herein as members of the City Council of the City of Renton who enacted the wholly unconstitutional ordinance as a part of their alleged legislative function.

8. Jim Bourasa is named a defendant herein in his capacity as Acting Chief of Police of the City of Renton who is primarily responsible for seeing to the enforcement of the City of Renton ordinances, civil, criminal and quasi-criminal in nature.

9. The defendants in their official capacities as aforesaid have acted and/or threaten to act to plaintiffs' immediate and irreparable harm under color of authority of the Ordinance *No. 3526* heretofore identified as *Exhibit "A"*.

The named defendants, in their official capacity as afore-mentioned, are joined herein to make enforceable to them and/or their agents, servants, employees and attorneys, any Preliminary and/or Permanent Injunction, Declaratory Judgment, and/or other Order of this Court.

III. FACTUAL ALLEGATIONS

10. The instant ordinance was passed with the sole purpose to prevent the opening of any adult motion picture theatre within the city limits of Renton and to effectively censor the kinds of protected *First Amendment* press materials available to adult citizens of the City of Renton and adult visitors to the City.

11. That no criminal, quasi-criminal and/or civil preceeding is pending in the city courts of the City of Renton or in the state courts in the State of Washington against the plaintiffs and/or their agents, servants and employees as of the date of the filing of this suit with respect to this matter.

12. That on the 19th day of January, 1982, Mike Parness, Administrative Assistant to the Mayor of the City of Renton has, as aforesaid, advised that if the property of the plaintiffs is used to exhibit adult motion picture films, then enforcement proceedings will be commenced forthwith.

13. That the City of Renton Ordinance *No. 3526* was enacted by the City Council and approved by the Mayor as a part of a systematic scheme, plan and design, under color of enforcement of the said ordinance to deny distributors and/or exhibitors of adult films access to the marketplace, and to deny to the interested adult public, access to such erotic materials which are not otherwise obscene under the test set forth in *Miller v. California*, 413 U.S. 15 (1973). See *Young v. American Mini Theatres*, 427 U.S. 50 (1975) at pages 62 and 71.

14. That requiring the plaintiffs to conform to this wholly unconstitutional zoning ordinance by not using the locations they have contracted to purchase, and requiring them to move their business to a selectively obscure geographical location, violates the plaintiffs' rights under the *First, Fifth, Sixth* and *Fourteenth Amendments* to

the Constitution of the United States. Indeed, by this selective ordinance, which would shutter motion picture theatres such as the Roxy Theatre and Renton Theatre, which show as part of their fare, erotic films, the City of Renton by its agents, servants and employees will be denying the plaintiffs and other persons lawfully engaged in the exhibition of adult film fare presumptively protected by the *First Amendment* to the Constitution of the United States, [*Heller v. People of the State of New York*, 413 U.S. 483 (1973); and *Roaden v. Commonwealth of Kentucky*, 413 U.S. 496 (1973)], access to the marketplace as well as the right of the interested adult public to have access to adult film fare, and will deny the plaintiffs the right to engage in said business in the City of Renton; and unless restrained, the City, under color of enforcement of its zoning laws, will cause said businesses to cease and close up; and unless restrained, defendants will continue to seek to enforce said ordinance and this will have the effect of totally depriving your plaintiffs, as well as others similarly situate, from their normal business activities. This will have a chilling effect on the dissemination and exhibition of adult film fare to those interested adults who seek to satiate their educational, entertainment, literary, scientific and artistic interests in such press materials. The ordinance places an intolerable burden upon the exercise of *First Amendment* rights, arbitrarily and capriciously descriminates [*sic*] as to the nature of film fare exhibited based upon an assumption which is not rationally related to a valid public purpose nor necessary to achieve a compelling state interest in violation of the Equal Protection Clause of the *Fourteenth Amendment* of the Constitution of the United States, establishes classifications which are arbitrary and capricious and constitutes an abuse of legislative discretion and is not rationally related and also deprives plaintiffs of their equal rights under the *Fourteenth Amendment* of the Constitution of the United States; and further by its use has language that is intrinsically vague

and void under the *First* and *Fifth Amendments* to the Constitution of the United States and void for impermissible overbreadth by the use of means which are too broad for the alleged evil intended to be curtailed. That the enactment of the City of Renton Ordinance *No. 3526* was done without the constitutionally required legislative fact finding required to meet the burden imposed upon those who seek to curtail activity which might otherwise be protected within the pneumbra [*sic*] of the *First Amendment* of the Constitution of the United States. The defendants, by their agents, servants and employees, and/or their attorneys, by enacting such a wholly unconstitutional ordinance, and now threatening to enforce the same, have created a pervasive atmosphere of official repression constituting a "chilling effect" upon the exercise of *First Amendment* rights of plaintiffs and others who may wish to engage in the lawful business of exhibiting adult film fare protected by the *First Amendment* to the Constitution of the United States, as well as the interested adult public who desire to see and view such adult film fare, and this has imposed and threatens to impose a wholly unconstitutional prior restraint condemned by the *First, Fourth, Fifth,* and *Fourteenth Amendments* to the Constitution of the United States, and this is merely a design and scheme on the part of the defendants to force the plaintiffs and others similarly situate out of business, under color and pretense of claimed enforcement of the ordinance attached hereto as *Exhibit "A"*, well knowing the patent unconstitutionality of the same.

15. Ordinance No. 3526 provides a new use classification within the zoning laws of the City of Renton; i.e., an adult motion picture theatre.

16. An adult motion picture theatre is not a permitted use within any zoning classification currently in use within the City of Renton. Accordingly, in order to locate an adult motion picture theatre anywhere within the City of

Renton, it is necessary to obtain a special permit, conditional use or variance.

17. The process of applying for a special permit, conditional use or variance vests unfettered discretionary authority in the Hearing Examiner, Board of Adjustment and/or City Council to deny such special permit, conditional use or variance. No objective written criteria, standards or guidelines have been established which would in any way limit this discretionary authority. In addition, the ordinances of the City of Renton set no time limit for the City Council to make a decision relative to an application for a special permit, conditional use or variance. The City Council has the discretion to withhold making a decision for an unreasonable length of time if it chooses to do so. The various matters to be considered by the Hearing Examiner and/or the Board of Adjustment in the granting or denial of a special permit, conditional use or variance are vague and aesthetic qualities that are not capable of objective measurement and, as such, they create the potential for an unreasonable burden upon free speech and, as applied to plaintiffs and a motion picture theatre, they are impermissibly overbroad and unconstitutional.

18. That requiring the plaintiffs to submit to a wholly unconstitutional exercise of unbridled discretion at the hands of a Hearing Examiner or Board of Adjustment and/or the City Council, in the absence of narrowly drawn, reasonable and difinitive [*sic*] standards to be followed in the exercise of said discretion violates plaintiffs' rights under the *First, Fifth* and *Fourteenth Amendments* to the Constitution of the United States. *Interstate Circuit v. Dallas*, 390 U.S. 676 (1968) and *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969).

19. Further, since the Hearing Examiner, Board of Adjustment and/or the City Council have no narrowly drawn, reasonable and definitive standards to be fol-

lowed by them in the exercise of the discretion conferred upon them by the Renton Zoning Code in making a determination about the issuance of a special permit, conditional use or variance, it would be an exercise in futility to engage in such administrative process because of the patently unconstitutional character of the zoning provisions in question.

20. The provisions of the Renton Zoning Code which apply to the issuance of special permits, conditional uses or variances, establish classifications which are arbitrary and capricious and constitute an abuse of legislative discretion, and also permit censorship by standardless rationale subject to abusive discretion by the defendants in violation of plaintiffs' substantive and due process rights under the pneumbra [*sic*] of the *First, Fifth* and *Fourteenth Amendments* of the Constitution of the United States; and further, have language that is intrinsically vague and void under the *First* and *Fifth Amendments* to the United States Constitution and void for impermissible overbreadth.

IV. BASIS IN LAW FOR RELIEF

21. Plaintiffs have the right to engage in the business of offering for exhibition adult motion picture film fare for profit by virtue of the *First Amendment* to the Constitution or adult film fare which is presumptively protected under said constitutional amendment, and the public, including both adult citizens and visitors to the City of Renton have the same constitutional right to view said adult motion picture film fare as may be offered for said exhibition to said adults in a nonintrusive manner. *Heller v. New York*, 413 U.S. 483, 37 L.Ed.2d 745, 93 Sup.Ct. 2789 (1973). Further, the conduct of the defendants and their agents, servants, employees and/or attorneys and others, acting under their direction and control in attempting to refuse to allow plaintiffs to op-

erate their businesses in the City of Renton, unless they remove themselves to some obtuse selectively obscure geographical site, will have the draconian effect of denying plaintiffs and others similarly situate, access to the marketplace, and the viewing adult public the right to satisfy its interest for adult film fare.

22. As a further result of the unconstitutional ordinance enacted by the City Council and approved by the Mayor, as well as the threatened conduct of the defendants to force plaintiffs to not engage in their businesses, plaintiffs have been required to retain attorneys to pursue their rights under the *First, Fourth, Fifth,* and *Fourteenth Amendments* to the Constitution of the United States, and the defendants, acting under color of pretense of law, as aforesaid, have threatened to initiate actions to enforce the said ordinance, which actions are and/or threaten to be, repugnant to the Constitution of the United States.

23. The City of Renton zoning ordinance designated herein as Ordinance *No. 3526,* is clearly repugnant to the *First, Fourth, Fifth* and *Fourteenth Amendments* to the Constitution of the United States as written and as threatened to be applied, for the following reasons:

(a) Said ordinance is void for vagueness in that it fails to establish by its terms, definitive standards, criteria and/or other controlling guides defining words, *inter alia* "other religious facility or institution" in Section II(A)(4) or "distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" as used in Section I(1) of said ordinance, as well as the words "erotic touching" as used in Section I(2)(C); and as such is a deprivation under color of state law of plaintiffs' right to due process under the *First, Fifth* and *Fourteenth Amendments* to the Constitution of the United States.

(b) Said ordinance is void for impermissible overbreadth by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms in that the same sets forth standards at variance with those minimum standards prescribed by the Supreme Court of the United States, in connection with the exercise of *First Amendment* rights, and in particular, those provisions which set forth the "specified anatomical areas" and "specified sexual activities" in Section I(2) and Section I(3).

(c) Said ordinance is further void for impermissible overbreadth and deprives plaintiffs of due process and equal protection of the law through the arbitrary and uncontrolled power conferred by the enactment of said ordinance to the defendants' enforcement of zoning laws for the exercise of otherwise clear *First Amendment* rights and therefore the same is invalid under the *First and Fifth Amendments* to the Constitution of the United States made obligatory on the States under the due process provisions of the *Fourteenth Amendment.*

(d) Said ordinance, lacking precision and narrow specificity in the standards to be employed by defendants in the operation of their legislative power to enact zoning laws, constitutes a prior restraint under color of state law on the exercise of plaintiffs of their rights under the *First, Fifth and Fourteenth Amendments* to the Constitution of the United States and as written, which is and has been, under the facts alleged herein, susceptible to arbitrary, capricious and uncontrolled discretion on the part of defendants herein, their agents, servants and employees.

(e) Said ordinance is void in that it fails, by its terms, to establish procedural safeguards to assure a prompt decision on the challenge to the arbitrary zoning classification, and if a zoning challenge is de-

nied, the ordinance fails by its terms to provide for a prompt final judicial review to minimize the deterrent effect of an interim and possibly erroneous zoning classification under procedures which places the burden on plaintiffs to both expeditiously institute judicial review and to persuade the courts that the activity sought to be licensed and the procedure and ordinance employed to authorize the same, is without the ambit of the *First Amendment*, and the abatement of the nonconforming use is not a proper exercise of authority.

(f) Said ordinance is further void in that the same, by its terms, places an impermissible burden upon the exercise of plaintiffs' *First Amendment* rights.

(g) Said ordinance is further void as violative of the Equal Protection Clause of the *Fourteenth Amendment*, in that the same creates a statutory classification which has no rational relationship to a valid public purpose nor is the same necessary to the achievement of a compelling state interest by the least drastic means.

(h) Said ordinance is repugnant to the substantive due process provisions of the *Fifth* and *Fourteenth Amendments* to the Constitution of the United States because the same permits deprivation of liberty and/or property interests for the exercise of *First Amendment* rights by unreasonable, arbitrary and capricious means without a showing of a real and substantial relationship to any state or city subordinating interest which is compelling to justify state or city action limiting the exercise by plaintiffs of their *First Amendment* freedoms.

(i) Said ordinance is impermissibly overbroad and repugnant to the procedural due process requirements of the *Fifth* and *Fourteenth Amendments* to the Constitution of the United States, in that the

same employs means lacking adequate safeguards, which due process demands, to assure presumptively protected press materials, sought to be distributed to an interested adult public, the constitutional protection of the *First Amendment.*

(j) Said ordinance is vague and impermissibly overbroad and thus repugnant to the *First, Fourth, Fifth* and *Fourteenth Amendments* to the United States Constitution, in that said ordinance, by its provisions, permits inherent powers of censorship and suppression constituting a prior restraint on the exercise of plaintiffs' *First Amendment* rights as well as the interested adult public who may desire to view presumptively protected press materials for the ideas presented therein.

(k) Said ordinance, and particularly Section I(2), in defining "specified sexual activities" defines that phrase in part as "erotic touching" and is thus void for vagueness in that "erotic" is a word that can mean many things to many people and without further clarification confers on defendants unbridled discretion in the interpretation of that term and as such, is violative of the plaintiffs' rights under the *First, Fifth* and *Fourteenth Amendments* to the Constitution of the United States.

(l) Said ordinance and particularly Section II(A) as it purports to establish restrictions, requirements and conditions for an alleged adult theatre imposes burdens, restrictions and conditions that are not justified by any compelling state interest and as such, the classification is an invidious and arbitrary discrimination as to a class and as such, is a denial of plaintiffs' rights under the *Fourteenth Amendment* to the Constitution of the United States, particularly where, as here, protected *First Amendment* activity is involved.

(m) The plaintiffs will suffer immediate and substantial economic harm if said ordinance is applied to them and the result of the application of said ordinance to the activities of the plaintiffs will result in a forfeiture of substantial business interests and assets.

24. Plaintiffs herein aver that their rights afforded under the *First, Fourth, Fifth, Sixth* and *Fourteenth Amendments* to the Constitution of the United States have been violated by said defendants in the enactment of a wholly unconstitutional ordinance, and that unless this Court grants the relief prayed for, said plaintiffs and others similarly situate, as well as the interested adult public, will suffer irreparable harms.

25. Plaintiffs aver that the aforesaid action of the defendants in enacting said ordinance, and the threatened enforcement thereof by said defendants acting under color of state law, is in furtherance of a scheme, plan and design to prevent any business activity which may offer for sale or exhibition adult press materials in the City of Renton to the adult public.

26. Those portions of the Renton Municipal Code contained in Chapter 4-722 relative to the issuance of special permits, conditional uses and variances, are clearly repugnant to the *First, Fourth, Fifth* and *Fourteenth Amendments* to the Constitution of the United States as written and as threatened to be applied, for the following reasons:

(a) Said provisions are void for vagueness in that they fail to establish by their terms definitive standards, criteria or other controlling guides defining concepts such as, *inter alia*

* * * *

Special Permits: Recognizing that there are certain uses of property that may be detrimental to the public health, safety, morals and general welfare . . .

* * * *

The purpose of a conditional use permit shall be to assure, by means of imposing special condition and requirements on development, that the compatibility of uses, a purpose of this Title, shall be maintained, considering other existing and potential uses within the general area of the proposed use.

* * * *

The examiner may deny any application if the characteristics of the intended use would create an incompatible or hazardous condition.

* * * *

The examiner shall have the right to limit the term and duration of any such conditional use permit and may impose such conditions as are reasonably necessary and required.

* * * *

The conditions imposed shall be those which will reasonable assure that nuisance or hazard to life or property will not develop.

* * * *

The examiner may, after a public hearing, permit the following uses in districts from which they are prohibited by this Chapter where such uses are deemed essential or desirable to the public convenience or welfare and are in harmony with the various elements or objectives of the comprehensive plan.

* * * *

The hearing examiner shall be empowered to approve conditionally approve or disapprove said conditional use permit applications based on normal planning considerations, including, but not limited to the

following factors: (a) suitability of site; (b) conformance to the comprehensive plan; (c) harmony with the various elements or objectives of the comprehensive plan; (d) the most appropriate use of land through the city; (e) stabilization and conservation of the value of property; . . . and prevention of neighborhood deterioration and blight; (o) the objectives of zoning and planning in the community; (p) the effect upon the general city's welfare of this proposed use in relation to surrounding uses in the community.

* * * *

That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property improvements in the vicinity and zone in which subject property is situated.

* * * *

That approval shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the subject property is situated.

* * * *

That the approval is determined by the examiner or Board of Adjustment is a minimum variance that will accomplish the desired purpose.

and as such are a deprivation under color of law of plaintiffs' right to due process under the *First, Fifth* and *Fourteenth Amendments* to the Constitution of the United States. Said provisions are void for impermissible overbreadth by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms in that the same set forth standards at variance with those minimum standards prescribed by the Supreme Court of the United States in connection with the exercise of First Amendment rights.

(b) Said provisions are further void for impermissible overbreadth and deprive plaintiffs of due process and equal protection of the law through the arbitrary and uncontrolled discretionary power conferred by said provisions upon the Hearing Examiner, Board of Adjustment and City Council and, therefore, the same are invalid under the *First* and *Fifth Amendments* to the Constitution of the United States made obligatory on the States under the due process provisions of the *Fourteenth Amendment.*

(c) Said provisions lack precision and narrow specificity in the standards to be employed by the Hearing Examiner, Board of Adjustment and/or City Council in the exercise of the discretion used in the operation of the City of Renton's legislative power to enact ordinances providing for zoning and, as such, constitute a prior restraint under color of state law and the exercise by plaintiffs of their rights under the *First, Fifth* and *Fourteenth Amendments* to the Constitution of the United States and as written, which is and have been, under the facts alleged herein, susceptible to arbitrary, capricious and uncontrolled discretion on the part of the defendants herein, their agents, servants and employees.

(d) Said provisions are void in that they fail by their terms to establish procedural safeguards to assure a prompt decision on a challenge to the capricious denial of a special permit, conditional use or variance. The provisions fail by their terms to provide for a prompt final judicial review to minimize the deterrent effect on an interim and possibly erroneous and arbitrary denial of a zoning special permit, conditional use or variance and, thus, the burden is on plaintiffs to both expeditiously institute judicial review and to persuade the courts that the activity sought to be pursued and the procedures and ordinances employed to prohibit the same are without the ambit of the *First Amendment.*

V. RELIEF SOUGHT

27. Plaintiffs are entitled to and desire that this Court enter a declaratory judgment, declaring Ordinance *No. 3526* to be unconstitutional as written and/or as defendants purport to apply it, in whole or in part, to be repugnant to the *First, Fourth, Fifth, Sixth* and/or *Fourteenth Amendments* to the Constitution of the United States.

28. Plaintiffs seek a preliminary and permanent injunction to prohibit the enforcement by defendants, and/or their agents, servants, employees, attorneys, and others acting under its direction and control of the provisions of Ordinance *No. 3526.*

WHEREFORE, plaintiffs pray:

1. That defendants be required to answer forthwith this Amended and Supplemental Complaint in conformance with the rules and practices of this Honorable Court.

2. That a Declaratory Judgment be rendered declaring Ordinance *No. 3526* to be unconstitutional as written, in whole and/or in part, and that this Court further declare the ordinance to be unconstitutional in its threatened application to the plaintiffs.

3. That a Preliminary Injunction issue from this Court upon hearing, restraining defendants and their agents, servants, employees, and attorneys, and others acting under their direction and control, pending a hearing and determination on plaintiffs' application for a Permanent Injunction, from enforcing or executing and/or threatening to enforce and/or execute the provisions of Ordinance *No. 3526* in whole and/or in part, by arresting plaintiffs, their agents, servants or employees, and/or threatening to arrest plaintiffs, their agents, servants and employees and/or harassing, threatening to close, or otherwise interferring with plaintiffs' peaceful use of the premises.

4. That upon a final hearing, that this Court issue its Permanent Injunction prohibiting the defendants and/or

their agents, servants and employees, and/or others in concert with them, from enforcing Ordinance *No. 3526* in whole or in part because of its patent unconstitutionality.

5. That upon a final hearing this Court award to the plaintiffs such damages as they shall have sustained by reason of loss of business, the expenditure of assets to enforce and protect the rights guaranteed to them under the Constitution of the United States, their reasonable attorney's fees and such other damages as may be established at the time of trial.

6. And for such other and further relief as may be appropriate under the circumstances of this case.

DATED this —— day of February, 1982.

Respectively submitted,

HUBBARD, BURNS & MEYER

By /s/ Jack R. Burns
JACK R. BURNS
Attorney for Plaintiffs

Of Counsel:

Robert Eugene Smith, Esq.
16133 Ventura Blvd.
Penthouse Suite F.
Encino, California 91436
(213) 981-9421

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

COMES NOW Jack R. Burns who, after being duly sworn, did depose and say:

1. That Playtime Theatres, Inc. and Kukio Bay Properties, Inc. are bodies corporate of the State of Washington, in good standing.

2. That affiant is one of the attorneys for said corporations. Affiant further states that he is authorized to speak on their behalf.

3. That said corporations are the plaintiffs in the within proceedings.

4. That he has read the complaint to which this affidavit is affixed and asserts that the factual allegations contained therein are true and correct to the best of his information, knowledge and belief.

5. That the enforcement of the City of Renton Ordinance *No. 3526* will, if upheld, have the effect of depriving plaintiffs of access to the marketplace to exhibit their presumptively protected *First Amendment* wares of adult film fare; and further, will deny to interested adults, the access to such material for their information, education, entertainment, literary, scientific or artistic interests, as well as subject plaintiffs, their agents, servants and employees to criminal arrests and confiscatory fines and forfeitures of property interests; and would further destroy the property and interest of said corporations in the location of their theatres operated at 504 South 3rd Street, and 507 South 3rd Street, in the City of Renton, and subject said plaintiff corporations to grievous financial harm as well as to also chill their rights of free speech as guaranteed by the *First Amendment. Dombrowski v. Pfister*, 380 U.S. 479 (1965).

/s/ Jack R. Burns
JACK R. BURNS

SUBSCRIBED AND SWORN to before me this 8th day of February, 1982.

/s/ (Illegible)
Notary Public in and for the
State of Washington residing
at (illegible)

APPENDIX L

CITY OF RENTON, WASHINGTON
ORDINANCE NO. 3526

AN ORDINANCE OF THE CITY OF RENTON, WASHINGTON, RELATING TO LAND USE AND ZONING

THE CITY COUNCIL OF THE CITY OF RENTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION I: Existing Section 4-702 of Title IV (Building Regulations) of Ordinance No. 1628 entitled "Code of General Ordinances of the City of Renton" is hereby amended by adding the following subsections:

1. "*Adult Motion Picture Theater*": An enclosed building used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characteristic by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as hereafter defined, for observation by patrons therein.

2. "*Specified Sexual Activities*":

   (a) Human genitals in a state of sexual stimulation or arousal;

   (b) Acts of human masturbation, sexual intercourse or sodomy;

   (c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

3. "*Specified Anatomical Areas*"

   (a) Less than completely and opaquely covered human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and

   (b) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

SECTION II: There is hereby added a new Chapter to Title IV (Building Regulations) of Ordinance No. 1628 entitled "Code of General Ordinances of the City of Renton" relating to adult motion picture theaters as follows:

A. Adult motion picture theaters are prohibited within the area circumscribed by a circle which has a radius consisting of the following distances from the following specified uses or zones:

1. Within or within one thousand (1000′) feet of any residential zone (SR-1, SR-2, R-1, S-1, R-2, R-3, R-4 or T) or any single family or multiple family residential use.

2. One (1) mile of any public or private school

3. One thousand (1000′) feet of any church or other religious facility or institution.

4. One thousand (1000′) feet of any public park or P-1 zone.

B. The distances provided in this section shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed use is to be located, to the nearest point of the parcel of property or the land use district boundary line from which the proposed land use is to be separated.

SECTION III: This Ordinance shall be effective upon its passage, approval and thirty days after its publication.

PASSED BY THE CITY COUNCIL this 13th day of April, 1981.

/s/ Delores A. Mead
DELORES A. MEAD
City Clerk

APPROVED BY THE MAYOR this 13th day of April, 1981.

/s/ Barbara Y. Shinpoch
BARBARA Y. SHINPOCH
Mayor

Approved as to form:

/s/ Lawrence J. Warren
LAWRENCE J. WARREN,
City Attorney
Date of Publication: May 15, 1981

APPENDIX M

CITY OF RENTON, WASHINGTON
ORDINANCE NO. 3629

AN ORDINANCE OF THE CITY OF RENTON, WASHINGTON RELATING TO LAND USE AND ZONING

WHEREAS, on April 13, 1981, the City Council of the City of Renton adopted Ordinance No. 3526, which Ordinance was approved by the Mayor on April 13, 1981, and became effective by its own terms on June 14, 1981; and

WHEREAS, it was the intention of the City Council of the City of Renton in the adoption of that Ordinance to rely upon the opinion of the United States Supreme Court in the case of *Young v. American Mini Theatres*, 427 US 50, and of the Supreme Court of the State of Washington in the case of *Northend Cinemas v. Seattle*, 90 Wn 2d, 709, to limit the location of adult motion picture theaters, as that term is defined therein, to promote the City of Renton's great interest in protecting and preserving the quality of its neighborhoods, commercial districts, and the quality of urban life through effective land use planning; and

WHEREAS, the City Council, through its Planning and Development Committee, held a public meeting on March 5, 1981, to receive testimony from the public concerning the subject of regulation of adult entertainment land uses, at which the following testimony was received which the City Council believes to be true, and which formed the basis for the adoption of Ordinance No. 3526:

1. Areas within close walking distance of single and multiple family dwellings should be free of adult entertainment land uses.
2. Areas where children could be expected to walk, patronize or recreate should be free of adult entertainment land uses.

3. Adult entertainment land uses should be located in areas of the City which are not in close proximity to residential uses, churches, parks and other public facilities, and schools.

4. The image of the City of Renton as a pleasant and attractive place to reside will be adversely affected by the presence of adult entertainment land uses in close proximity to residential land uses, churches, parks and other public facilities, and schools.

5. Regulation of adult entertainment land uses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than in response to an existing problem.

6. Commercial areas of the City patronized by young people and children should be free of adult entertainment land uses.

7. The Renton School District opposes a location of adult entertainment land uses within the perimeters of its policy regarding bussing of students, so that students walking to school will not be subjected to confrontation with the existence of adult entertainment land uses.

8. The Renton School District finds that location of adult entertainment land uses in areas of the City which are in close proximity to schools, and commercial areas patronized by students and young people, will have a detrimental effect upon the quality of education which the School District is providing for its students.

9. The Renton School District finds that education of its students will be negatively affected by location of adult entertainment land uses in close proximity to location of schools.

10. Adult entertainment land uses should be regulated by zoning to separate it from other dissimilar uses just as any other land use should be separated from uses with characteristics different from itself.

11. Residents of the City of Renton, and persons who are non-residents but use the City of Renton for shopping and other commercial needs, will move from the community or shop elsewhere if adult entertainment land uses are allowed to locate in close proximity to residential uses, churches, parks and other public facilities, and schools.

12. Location of adult entertainment land uses in proximity to residential uses, churches, parks and other public facilities, and schools, may lead to increased levels of criminal activities, including prostitution, rape, incest and assaults in the vicinity of such adult entertainment land uses.

13. Merchants in the commercial area of the City are concerned about adverse impacts upon the character and quality of the City in the event that adult entertainment land uses are located within close proximity to residential uses, churches, parks and other public facilities, and schools. Location of adult entertainment land uses in close proximity to residential uses, churches, parks and other public facilities, and schools, will reduce retail trade to commercial uses in the vicinity, thus reducing property values and tax revenues to the City. Such adverse affect on property values will cause the loss of some commercial establishments followed by a blighting effect upon the commercial districts within the City, leading to further deterioration of the commercial quality of the City.

14. Experience in numerous other cities, including Seattle, Tacoma and Detroit, Michigan, has shown

that location of adult entertainment land uses degrade the quality of the areas of the City in which they are located and cause a blighting effect upon the city. The skid row effect, which is evident in certain parts of Seattle and other cities, will have a significantly larger affect upon the City of Renton than other major cities due to the relative sizes of the cities.

15. No evidence has been presented to show that location of adult entertainment land uses within the City will improve the commercial viability of the community.

16. Location of adult entertainment land uses within walking distance of churches and other religious facilities will have an adverse effect upon the ministry of such churches and will discourage attendance at such churches by the proximity of adult entertainment land uses.

17. A reasonable regulation of the location of adult entertainment land uses will provide for the protection of the image of the community and its property values, and protect the residents of the community from the adverse effects of such adult entertainment land uses, while providing to those who desire to patronize adult entertainment land uses such an opportunity in areas within the City which are appropriate for location of adult entertainment land uses.

19. The community will be an undesirable place to live if it is known on the basis of its image as the location of adult entertainment land uses.

20. A stable atmosphere for the rearing of families cannot be achieved in close proximity to adult entertainment land uses.

21. The initial location of adult entertainment land uses will lead to the location of additional and similar uses within the same vicinity, thus multiplying the adverse impact of the initial location of adult entertainment land uses upon the residential [*sic*], churches, parks and other public facilities, and schools, and the impact upon the image and quality of the character of the community.

and

WHEREAS, since the adoption of Ordinance No. 3526, it has come to the attention of the City Council of the City of Renton that it would be appropriate to set forth in writing the findings of fact which were the basis for the adoption by the City Council of Ordinance No. 3526; and

WHEREAS, the City Council finds that, in order to choose the least restrictive alternative available to accomplish the purposes for which Ordinance No. 3526 was adopted, and to include a severability clause which was inadvertently omitted from Ordinance No. 3526, and to make certain other technical amendments to Ordinance No. 3526, that it is necessary for the City Council to adopt legislation amending Ordinance No. 3526 to accomplish the foregoing purposes; and

WHEREAS, the City Council, at its duly called special meeting on February 25, 1982, held a public hearing upon the subject matter of land use regulations of adult motion pictures within the City of Renton, at which public hearing the City Council received comments from the public on that subject matter at which the following testimony was received, which the City Council believes to be true, and which, together with the findings heretofore set forth as the basis for the adoption of Ordinance No. 3526, form the basis for the adoption of this Ordinance:

1. Many parents have chosen the City of Renton in which to raise their families because of the lack

of pornographic entertainment outlets with its influence upon children external to the home.

2. Location of adult entertainment land uses on the main commercial thoroughfares of the City gives an impression of legitimacy to, and causes a loss of sensitivity to the adverse affect of pornography upon children, established family relations, respect for marital relationships and for the sanctity of marriage relations of others, and the concept of non-aggressive consenual sexual relations.

3. Citizens from other cities and King County will travel to Renton to view adult film fare away from areas in which they are known and recognized.

4. Property values in the areas adjacent to the adult entertainment land uses will decline, thus causing a blight upon the commercial area of the City of Renton.

5. Location of adult entertainment land uses within neighborhoods and commercial areas of the City of Renton is disrupting to youth programs such as Boy Scouts, Cub Scouts and Campfire Girls. Many such youth programs use the commercial areas of the City as a historical research resource. Location of adult entertainment land uses in close proximity to residential uses, churches, parks and other public facilities and schools is inappropriate.

6. Location of adult entertainment land uses in close proximity to residential uses, churches, parks and other public facilities, and schools, will cause a degradation of the community standard of morality. Pornographic material has a degrading effect upon the relationship between spouses.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RENTON, WASHINGTON DO ORDAIN AS FOLLOWS:

SECTION I: Existing Section 4-702 of Title IV (Building Regulations) of Ordinance No. 1628 entitled "Code of General Ordinances of the City of Renton" is hereby amended by adding the following subsections:

"*Used*" The word "used" in the definition of "Adult motion picture theater" herein, describes a continuing course of conduct of exhibiting "specific sexual activities" and "specified anatomical areas" in a manner which appeals to a prurient interest.

SECTION II: Existing Section 4-735 of Title IV (Building Regulations) of Ordinance No. 1628 entitled "Code of General Ordinances of the City of Renton" is hereby amended by adding the following subsections:

(C) Violation of the use provisions of this section is declared to be a public nuisance *per se*, which shall be abated by City Attorney by way of civil abatement procedures only, and not by criminal prosecution.

(D) Nothing in this section is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any City of Renton ordinance or statute of the State of Washington regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

SECTION III: Existing subsection (A) (2) of Section 4-735 of Title IV (Building Regulations) of Ordinance No. 1628 entitled "Code of General Ordinances of the City of Renton" is hereby amended to read as follows:

2. One thousand feet (1,000′) of any public or private school.

SECTION IV: City of Renton Ordinance No. 3526 is hereby amended by adding the following section to read as follows:

If any section, subsection, sentence, clause, phrase or any portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Renton hereby declares that it would have adopted City of Renton Ordinance No. 3526 and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentence, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION V: If any section, subsection, sentence, clause, phrase or any portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Renton hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION VI: The City Council of the City of Renton finds and declares that an emergency exists because of the pendency of litigation against the City of Renton involving the subject matter of this ordinance, and potential liability of the City of Renton for damages as pleaded in that litigation, and that the immediate adoption of this ordinance is necessary for the immediate preservation of public peak [*sic*], health, and safety or for the support of city government and its existing public institutions and the integrity of the zoning of the City of Renton.

Therefore, this ordinance shall take effect immediately upon its passage and approval by the mayor.

PASSED BY THE CITY COUNCIL this 3th day of May, 1982.

/s/ Delores A. Mead
DELORES A. MEAD
City Clerk

APPROVED BY THE MAYOR this 3th day of May, 1982.

/s/ Barbara Y. Shinpoch
BARBARA Y. SHINPOCH
Mayor

Approved as to form:

/s/ Lawrence J. Warren
LAWRENCE J. WARREN
City Attorney

Date of Publication: May 7, 1982

APPENDIX N

CITY OF RENTON, WASHINGTON
ORDINANCE NO. 3637

AN ORDINANCE OF THE CITY OF RENTON, WASHINGTON AMENDING ORDINANCE NO. 3526 RELATING TO LAND USE AND ZONING AND AMENDING ORDINANCE NO. 3629 BY DELETING THE EMERGENCY CLAUSE AND RE-ENACTING THE REMAINDER THEREOF

WHEREAS, on April 13, 1981, the City Council of the City of Renton adopted Ordinance No. 3526, which Ordinance was approved by the Mayor on April 13, 1981, and became effective by its own terms on June 14, 1981; and

WHEREAS, on May 3, 1982, the City Council of the City of Renton adopted Ordinance No. 3629 amending Ordinance No. 3526, which Ordinance was approved by the Mayor on May 3, 1982, and became effective on its passage and by the terms of the Ordinance; and

WHEREAS the City Council wishes to remove the emergency clause from Ordinance No. 3629 and re-enact the remainder of Ordinance No. 3629 in its entirety; and

WHEREAS, it was the intention of the City Council of the City of Renton in the adoption of Ordinance No. 3526 to rely upon the opinion of the United States Supreme Court in the case of *Young v. American Mini Theatres*, 427 US 50, and of the Supreme Court of the State of Washington in the case of *Northend Cinemas v. Seattle*, 90 Wn 2d, 709, to limit the location of adult motion picture theaters as that term is defined therein, to promote the City of Renton's great interest in protecting and preserving the quality of its neighborhoods, commercial districts, and the quality of urban life through effective land use planning; and

WHEREAS, the City Council, through its Planning and Development Committee, held a public meeting on March

5, 1981, to receive testimony from the public concerning the subject of regulation of adult entertainment land uses, at which the following testimony was received which the City Council believes to be true, and which formed the basis for the adoption of Ordinance No. 3526:

1. Areas within close walking distance of single and multiple family dwellings should be free of adult entertainment land uses.

2. Areas where children could be expected to walk, patronize or recreate should be free of adult entertainment land uses.

3. Adult entertainment land uses should be located in areas of the City which are not in close proximity to residential uses, churches, parks and other public facilities, and schools.

4. The image of the City of Renton as a pleasant and attractive place to reside will be adversely affected by the presence of adult entertainment land uses in close proximity to residential land uses, churches, parks and other public faciilties, and schools.

5. Regulation of adult entertainment land uses should be developed to prevent deterioration and/or degradation of the vitality of the community before the problem exists, rather than in response to an existing problem.

6. Commercial areas of the City patronized by young people and children should be free of adult entertainment land uses.

7. The Renton School District opposes a location of adult entertainment land uses within the perimeters of its policy regarding busing of students, so that students walking to school will not be subjected to confrontation with the existence of adult entertainment land uses.

8. The Renton School District finds that location of adult entertainment land uses in areas of the City which are in close proximity to schools, and commercial areas patronized by students and young people, will have a detrimental effect upon the quality of education which the School District is providing for its students.

9. The Renton School District finds that education of its students will be negatively affected by location of adult entertainment land uses in close proximity to location of schools.

10. Adult entertainment land uses should be regulations by zoning to separate it from other dissimilar uses just as any other land use should be separated from uses with characteristics different from itself.

11. Residents of the City of Renton, and persons who are non-residents but use the City of Renton for shopping and other commercial needs, will move from the community or shop elsewhere if adult entertainment land uses are allowed to locate in close proximity to residential uses, churches, parks and other public facilities, and schools.

12. Location of adult entertainment land uses in proximity to residential uses, churches, parks and other public facilities, and schools, may lead to increased levels of criminal activities, including prostitution, rape, incest and assaults in the vicinity of such adult entertainment land uses.

13. Merchants in the commercial area of the City are concerned about adverse impacts upon the character and quality of the City in the event that adult entertainment land uses are located within close proximity to residential uses, churches, parks and other public facilities, and schools. Location of adult entertainment land uses in close

proximity to residential uses, churches, parks and other public facilities, and schools, will reduce retail trade to commercial uses in the vicinity, thus reducing property values and tax revenues to the City. Such adverse affect on property values will cause the loss of some commercial establishments followed by a blighting effect upon the commercial districts within the City, leading to further deterioration of the commercial quality of the City.

14. Experience in numerous other cities, including Seattle, Tacoma and Detroit, Michigan, has shown that location of adult entertainment land uses degrade the quality of the area of the City in which they are located and cause a blighting effect upon the City. The skid row effect, which is evident in certain parts of Seattle and other cities, will have a significantly larger affect upon the City of Renton than other major cities due to the relative sizes of the cities.

15. No evidence has been presented to show that location of adult entertainment land uses within the City will improve the commercial viability of the community.

16. Location of adult entertainment land uses within walking distance of churches and other religious facilities will have an adverse effect upon the ministry of such churches and will discourage attendance at such churches by the proximity of adult entertainment land uses.

17. A reasonable regulation of the location of adult entertainment land uses will provide for the protection of the image of the community and its property values, and protect the residents of the community from the adverse effects of such adult entertainment land uses, while providing to those

who desire to patronize adult entertainment land uses such an opportunity in areas within the City which are appropriate for location of adult entertainment land uses.

18. The community will be an undesirable place to live if it is known on the basis of its image as the location of adult entertainment land uses.

19. A stable atmosphere for the rearing of families cannot be achieved in close proximity to adult entertainment land uses.

20. The initial location of adult entertainment land uses will lead to the location of additional and similar uses within the same vicinity, thus multiplying the adverse impact of the initial location of adult entertainment land uses upon the residential [*sic*], churches, parks and other public facilities, and schools, and the impact upon the image and quality of the character of the community.

and

WHEREAS, since the adoption of Ordinance No. 3526, it has come to the attention of the City Council of the City of Renton that it would be appropriate to set forth in writing the findings of fact which were the basis for the adoption by the City Council of Ordinance No. 3526; and

WHEREAS, the City Council finds that, in order to choose the least restrictive alternative available to accomplish the purposes for which Ordinance No. 3526 was adopted, and in [*sic*] include a severability clause which was inadvertently omitted from Ordinance No. 3526, and to make certain other technical amendments to Ordinance No. 3526, that it is necessary for the City Council to adopt legislation amending Ordinance No. 3526 to accomplish the foregoing purposes; and

WHEREAS, the City Council, at its duly called special meeting on February 25, 1982, held a public hearing upon the subject matter of land use regulations of adult motion pictures within the City of Renton, at which public hearing the City Council received comments from the public on that subject matter at which the following testimony was received, which the City Council believes to be true, and which, together with the findings heretofore set forth as the basis for the adoption of Ordinance No. 3256, form the basis for the adoption of this Ordinance:

1. Many parents have chosen the City of Renton in which to raise their families because of the lack of pornographic entertainment outlets with its influence upon children external to the home.

2. Location of adult entertainment land uses on the main commercial thoroughfares of the City gives an impression of legitimacy to, and causes a loss of sensitivity to the adverse affect of pornography upon children, established family relations, respect for marital relationship and for the sanctity of marriage relations of others, and the concept of non-aggressive consensual sexual relations.

3. Citizens from other cities and King County will travel to Renton to view adult film fare away from areas in which they are known and recognized.

4. Property values in the areas adjacent to the adult entertainment land uses will decline, thus causing a blight upon the commercial area of the City of Renton.

5. Location of adult entertainment land uses within neighborhoods and commercial areas of the City of Renton is disrupting to youth programs such as Boy Scouts, Cub Scouts and Campfire Girls. Many such youth programs use the commercial

areas of the City as a historical research resource. Location of adult entertainment land uses in close proximity to residential uses, churches, parks and other public facilities and schools is inappropriate.

6. Location of adult entertainment land uses in close proximity to residential uses, churches, parks and other public facilities, and schools, will cause a degradation of the community standard of morality. Pornographic material has a degrading effect upon the relationship between spouses.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RENTON, WASHINGTON DO ORDAIN AS FOLLOWS:

SECTION I: Existing Section 4-702 of Title IV (Building Regulations) of Ordinance No. 1628 entitled "Code of General Ordinances of the City of Ren ton" is hereby amended by adding the following subsections:

"Used" The word "used" in the definition of "Adult motion picture theater" herein, describes a continuing course of conduct of exhibiting "specific sexual activities" and "specified anatomical area in a manner which appeals to a prurient interest.

SECTION II: Existing Section 4-735 of Title IV (Building Regulations) of Ordinance No. 1628 entitled "Code of General Ordinances of the City of Renton" is hereby amended by adding the following subsections:

(C) Violation of the use provisions of this section is declared to be a public nuisance per se, which shall be abated by City Attorney by way of civil abatement procedures only, and not by criminal prosecution.

(D) Nothing in this section is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any

City of Renton ordinance or statute of the State of Washington regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

SECTION III: Existing subsection (A)(2) of Section 4-735 of Title IV (Building Regulations) of Ordinance No. 1628 entitled "Code of General Ordinances of the City of Renton" is hereby amended to read as follows:

2. One thousand feet (1,000′) of any public or private school.

SECTION IV: City of Renton Ordinance No. 3526 is hereby amended by adding the following section to read as follows:

If any section, subsection, sentence, clause, phrase or any portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Renton hereby declares that it would have adopted City of Renton Ordinance No. 3526 and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION V: In any section, subsection, sentence, clause, phrase or any portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Renton hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION VI: This ordinance shall be effective upon its passage, and approval and thirty (30) days after its publication.

PASSED BY THE CITY COUNCIL this 14th day of June, 1982.

/s/ Delores A. Mead
DELORES A. MEAD
City Clerk

APPROVED BY THE MAYOR this 14th day of June, 1982.

/s/ Barbara Y. Shinpoch
BARBARA Y. SHINPOCH
Mayor

Approved as to form:

/s/ Lawrence J. Warren
LAWRENCE J. WARREN
City Attorney

Date of Publication: June 18, 1982

APPENDIX O

ORDINANCE NO. 742-G

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

Section 1. That Ordinance No. 390-G, entitled: "An Ordinance to establish districts in the City of Detroit; to regulate the use of land and structures therein, to regulate and limit the heighth, the area, the bulk and location of buildings; to regulate and restrict the location of trades and industries and the location of buildings designed for specified uses; to regulate and determine the area of yards, courts and other open spaces; to regulate the density of population; to provide for the establishment of a program to develop and upgrade the appearance of places of businesses or other establishments and to provide a local assessment district for the payment of the cost of such improvements according to the benefits to be derived therefrom; to provide for the administration and enforcement of this Ordinance; to provide for a Board of Appeals, and its powers and duties; and to provide a penalty for the violation of the terms thereof," as amended, be and the same is hereby amended by adding new sections to be known as Section 32.0007, 32.0023, and 66.0103 and by amending Sections 66.0000, 66.0101, 66.0102, 94.0300, 95.0300, 101.0100 and 102.0100, to read as follows:

Section 32.0007 Adult

Adult Book Store

An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas", (as defined below), or an establishment with a segment or section devoted to the sale or display of such material.

Adult Motion Picture Theater

An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas", (as defined below) for observation by patrons therein.

Adult Mini Motion Picture Theater

An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting describing, or relating to "Specified Sexual Activities" or "Specified Anatomical Areas", (as defined below), for observation by patrons therein.

For the purpose of this Section, "Specified Sexual Activities" is defined as:

1. Human Genitals in a state of sexual stimulation or arousal;

2. Acts of human masturbation, sexual intercourse or sodomy;

3. Fonding or other erotic touching of human genitals, public region, buttock or female breast.

And "Specified Anatomical Areas" is defined as:

1. Less than completely and opaquely covered: (a) human genitals, pubic region, (b) buttock, and (c) female breast below a point immediately above the top of the areola; and

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Section 32.0023 Cabaret

Group "D" Cabaret

A cabaret which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.

66.0000 Regulated Uses

In the development and execution of this Ordinance, it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area (i.e. not more than two such uses within one thousand feet of each other which would create such adverse effects).

Uses subject to these controls are as follows:

Adult

Adult Book Store

Adult Motion Picture Theater

Adult Mini Motion Picture Theater

Cabaret

Group "D" Cabaret

Establishments for the sale of beer or intoxicating liquor for consumption on the premises.

Hotel or motels

Pawnshops

Pool or billiard halls

Public lodging houses

Secondhand stores

Shoeshine parlors

Taxi dance halls

Section 66.0101.

The Commission may waive this locational provision for Adult Book Stores, Adult Motion Picture Theaters, Adult Mini Motion Picture Theaters, Group "D" Cabaret, hotels or motels, pawnshops, pool or billiard halls, public lodging houses, second hand stores, shoeshine parlors, or taxi dance halls if the following findings are made:

a) That the proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this Ordinance will be observed.

b) That the proposed use will not enlarge or encourage the development of a "skid row" area.

c) That the establishment of an additional regulated use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any program of urban renewal.

d) That all applicable regulations of this Ordinance will be observed.

Section 66.0102

For establishments for the sale of beer or intoxicating liquor for consumption on the premises, the Common Council may waive the locational requirements if the findings required in Section 66.0101 (a) through (d) can be made or waived for just cause and after receiving a report and recommendations from the City Plan Commission.

Section 66.0103

It shall be unlawful to hereafter establish any Adult Book Store, Adult Motion Picture Theater, Adult Mini Theater or Class "D" Cabaret within 500 feet of any building containing a residential, dwelling or rooming unit. This prohibition may be waived if the person applying for the waiver shall file with the City Plan Commission a petition which indicates approval of the proposed regulated use by 51 per cent of the persons owning, residing or doing business within a radius of 500 feet of the location of the proposed use, the petitioner shall attempt to contact all eligible locations within this radius, and must maintain a list of all addresses at which no contact was made.

The Commissioner of the Department of Buildings and Safety Engineering shall adopt rules and regulations governing the procedure for securing the petition of consent provided for in this section of the ordinance. The rules shall provide that the circulator of the petition requesting a waiver shall subscribe to an affidavit attesting to the fact that the petition was circulated in accordance with the rules of the Department of Buildings and Safety Engineering and that the circulator personally witnessed the signatures on the petition and that the same were affixed to the petition by the person whose name appeared thereon.

The City Plan Commission shall not consider the waiver of locational requirements set forth in Section 66.0000 to 66.0102 until the above described petition shall have been filed and verified.

94.0300 Permitted with Approval Uses

The following uses, and uses accessory thereto, shall be permitted by the Commission, or Council if specified, and subject to compliance with the provisions and standards as set forth in Article VI, Section 65.0000 and to all conditions hereinafter listed.

Adult

Adult Book Stores as regulated by Section 66.0000.

Adult Motion Picture Theater as regulated by Section 66.0000.

Adult Mini Motion Picture Theater as regulated by Section 66.0000.

Cabaret

Group "D" Cabaret as regulated by Section 66.0000.

Confection manufacture.

Dental products, surgical, or optical goods manufacture.

Fraternity or sorority houses.

Go-Cart tracks, subject to the following requirements, except as may be adjusted by the Commission:

a) Parking areas shall be surfaced with gravel, slag, or other comparable material and treated so as to prevent the raising of dust.

b) Ingress or egress shall be only from the principal street side of the property as may be determined by the Commission.

c) If lighting is provided, all such lighting shall be subdued, shaded, and focused away from all dwellings.

d) An opaque fence or wall of wood or masonary construction, six feet in height, shall be constructed between the approved site and any adjacent property zoned in a residential district classification. If such fence is of wood construction, the design and type of fence shall be subject to the approval of the Commission.

e) In all instances where a wall or fence is required, said wall or fence shall be protected from possible damage inflicted by vehicles using the parking area

by means of precast concrete wheel stops at least six inches in height, or by firmly implanted bumper guards not attached to the wall or fence, or by other suitable barriers.

f) No part of the driving track shall be within 300 feet of property zoned in a residential district classification.

g) Any track surface or other area to be used for the operation of a go-cart shall be of an asphaltic or concrete material.

h) All light standards, poles, or other appurtenances shall be effectively padded or screened so as to prevent injury to drivers of the vehicles; baled hay or other suitable shock absorbing material shall be placed around all turns or curves in the track.

i) All vehicles shall be provided with mufflers to eliminate objectionable noise. The Commission may require a change in mufflers to reduce exhaust noises, if, in its opinion, such noise becomes a nuisance.

j) Permitted hours of operation shall be 10:00 A.M. to 10:00 P.M. Monday through Saturday, and 12:00 noon to 10:00 P.M. on Sundays.

Jewelry manufacture

Lithographing

Miniature golf courses, subject to the following requirements, except as may be adjusted by the Commission:

a) Parking areas shall be surfaced with gravel, slag, of other comparable material and treated so as to prevent the raising of dust.

b) Ingress and egress shall be only from the principal street side of the property as may be determined by the Commission.

c) If lighting is provided, all such lighting shall be subdued, shaded, and focused away from all dwellings.

d) An opaque fence or wall of wood or masonary construction, six feet in height, shall be constructed between the approved site and any adjacent property zoned in a residential district classification. If such fence is of wood construction, the design and type of fence shall be subject to the approval of the Commission.

e) In all instances where a wall or fence in required, said wall or fence shall be protected from possible damage inflicted by vehicles using the parking area by means of precast concrete wheel stops at least six inches in height, or by firmly implanted bumper guards not attached to the wall or fence, or by other suitable barriers.

f) Loudspeakers or public address systems may be used only for control purposes, shall play no music, and shall be removed if, in the opinion of the Commission, such operation constitutes a nuisance.

g) No part of the playing surface of a miniature golf course shall be located within fifty (50) feet of any property zoned in a residential district classification.

h) Permitted hours of operation shall be 8:00 A.M. to 10:30 P.M. Monday through Saturday, and 12:00 noon to 10:30 P.M. Sunday.

Motels or hotels as regulated by Section 66.0000

Motor vehicle body or fender bumping and painting shops and major motor repairing provided that all operations are conducted entirely within a building, and further provided that any wall facing, abutting, or adjacent to residentially zoned property shall consist of a solid blank wall with no openings whatsoever, excepting that a

required secondary exit door, of minimum requirements, shall be permitted and provided further, that all open storage vehicles awaiting repairs or service be enclosed by an opaque wall or fence of masonry or wood construction six feet in height and maintained in a neat and orderly fashion at all times.

Multiple family dwellings, which may contain non-residential uses as specified in Article VIII, Section 86.0113.

Photoengraving.

Printing or engraving shops

Public lodging houses, as regulated by Section 66.000

Rebound tumbling centers, subject to the following requirements, except as may be adjusted by the Commission:

a) Parking areas shall be surfaced with gravel, slag, or other comparable material and treated so as to prevent the raising of dust.

b) Ingress and egress shall be only from the principal street side of the property as may be determined by the Commission.

c) If lighting is provided, all such lighting shall be subdued, shaded, and focused away from all dwellings.

d) An opaque fence or wall of wood or masonary construction, six feet in height, shall be constructed between the approved site and any adjacent property zoned in a residential district classification. If such fence is of wood construction, the design and type of fence shall be subject to the approval of the Commission.

e) In all instances where a wall or fence shall be protected from possible damage inflicted by vehicles using the parking area by means of precast concrete

wheel stops at least six inches in height, or by firmly implanted bumper guards not attached to the wall or fence, or by other suitable barriers.

f) Loudspakers or public address systems may be used only for control purposes, shall play no music, and shall be removed if, in the opinion of the Commission, such operation constitutes a nuisance.

g) No rebound tumbling apparatus or part thereof shall be located within one hundred feet of any property zoned in a residential district classification.

h) Permitted hours of operation shall be 8:00 A.M. to 10:30 P.M. Monday through Saturday, and 12:00 noon to 10:30 P.M. Sunday.

Residential uses combined in structures with permitted commercial or other uses

Restaurants, drive-in, when located on a street designated on the master plan of trafficways as a major thoroughfare, subject to the following requirements except as may be adjusted by the Commission or Council:

a) An unpierced masonry wall or opaque wood fence six feet in height shall be provided on all sides of the premises so used; provided, that in all instances where a wall or fence is required, said wall or fence shall be protected from possible damage inflicted by vehicles using the parking area by means of precast concrete wheel stops at least six inches in height, or by firmly implanted bumper guards not attached to the wall or fence, or by other suitable barriers.

b) On the side of the property abutting the access street, the above described wall or opaque wood fence may be reduced to a height of three feet six inches.

c) Wire mesh fencing not exceeding two inch mesh and made of number nine or heavier wire may be used

in lieu of a masonry wall on those lot lines not adjacent to a street or alley but contiguous to property zoned in a business or industrial district classification.

d) No fence or wall shall be required on that portion of a lot line where there is a building or structure serving the purpose of a fence or wall. Any such building or structure located on adjacent property shall be protected from damage as specified in a) above.

e) The entire parking area shall be paved with a permanent surface of concrete or asphaltic cement and shall be graded and drained in accordance with the city plumbing code. Any unpaved area of the site shall be landscaped with lawn or other horticultural materials, maintained in a neat and orderly fashion at all times, and separated from the paved area by a raised curb or other equivalent barrier.

And Provided, that a written report of the Commission's decision shall be filed with the Common Council, which shall become final 30 days after the filing thereof unless within that time a protest against such decision is filed with the Council signed by the applicant or by an owner of property within 300 feet of the premises in question. In such event the Council shall, by resolution, approve or disapprove such use.

Rooming houses

Single or two-family dwellings, which may contain home occupations as regulated in Section 83.0105, paragraphs b through h

Special small tool, die, and gauge manufacturing employing not more than 15 persons in manufacturing operations, Provided, that a written report of the Commission's decision shall be filed with the Common Council, which shall become final 30 days after the filing thereof unless

within that time a protest against such decision is filed with the Council signed by the applicant or by an owner of property within 300 feet of the premises in question. In such event the Council shall, by resolution, approve or disapprove such use.

Taxi dance halls, as regulated by Section 66.0000

Toiletries or cosmetics goods manufacture

Town houses

Wearing apparel manufacture

Wholesaling, warehousing, storage, or transfer buildings, but excluding steel warehousing, storage of bulk petroleum or related products, or garbage or rubbish. All materials must be completely enclosed within a building.

Uses similar to the above specified uses

95.0300 Permitted with Approval Uses

The following uses, and uses accessory thereto, shall be permitted by the Commission, or Council if specified, and subject to compliance with the provisions and standards as set forth in Section 65.0000 and to all conditions hereinafter listed.

Adult

Adult Book Store as regulated by Section 66.0000.

Adult Motion Picture Theater as regulated by Section 66.0000.

Adult Mini Motion Picture Theater as regulated by Section 66.0000.

Cabaret

Group "D" Cabaret as regulated by Section 66.0000.

Heliports, subject to the approval of the Common Council after report and recommendation from the Detroit Aviation Commission and the City Plan Commission and

upon finding that such use is suitable in relation to the features and objectives of the master plan and not contrary to the spirit, intent, and purpose of this district.

Motor vehicle body or fender bumping and painting shops and major motor repairing provided that all operations are conducted entirely within a building, and further, provided, that any wall facing, abutting, or adjacent to residentially zoned property shall consist of a solid blank wall with no openings whatsoever, excepting that a required secondary exit door, of minimum requirements, shall be permitted, and provided further, that all open storage of vehicles awaiting repairs or service shall be enclosed by an opaque wall or fence six feet in height and maintained in a neat and orderly fashion at all times.

Multiple-family dwellings, which may be combined in structures with permitted commercial uses

Public lodging houses, as regulated by Section 66.0000

Rooming houses

Taxi dance halls, as regulated by Section 66.0000

Town houses

Wholesaling, warehousing, storage, or transfer buildings, but excluding steel warehousing, storage of bulk petroleum or related prducts, or garbage or rubbish. All material must be completely enclosed within a building.

The following manufacturing uses:

Wearing apparel manufacturing

Confection manufacturing

Dental products, surgical, or optical goods manufacturing

Jewelry manufacturing

Toiletries or cosmetic manufacturing

Similar manufacturing uses as determined by the Commission

101.0100 Uses Permitted as a Matter of Right

All uses permitted as a matter of right in the B4 or B5 Districts excepting new residential uses and hospitals or other institutions for the care of humans, hotels or motels; and provided, that the provisions of Section 66.0000 shall also apply to this Section 101.0100.

102.0100 Uses Permitted as a Matter of Right

Uses permitted as a matter of right in the B4 or B5 districts, except public or private elementary, junior high, or high schools; new residential uses; hotels or motels, hospitals or other institutions for the care of humans; and provided, that the provisions of Section 66.0000 shall also apply to this Section 102.0100.

Uses permitted as a matter of right in the B6 district except wholesale or retail produce markets, storage or killing of poultry or small game for retail or wholesale trade, and meat or fish products manufacture or processing; and provided, that the provisions of Section 66.0000 shall also apply to this Section 102.0100.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

(JCC p. 2425-30, October 3, 1972)

Passed October 24, 1972.

Approved October 26, 1972.

Published November 1, 2, 3, 1972.

Effective November 2, 1972.

GEORGE C. EDWARDS
City Clerk

APPENDIX P

AN ORDINANCE to amend Chapter 5, Article 2 of the Code of Detroit by amending Sections 5-2-1.1, 5-2-3 and 5-2-24, and by adding new sections to be known as Sections 5-2-1.2, 5-2-9.1 and 5-2-24.1 to include coin operated motion picture devices, adult motion picture theaters, adult mini motion picture theaters, drive-in theaters and concert halls and setting forth the requirements therefor.

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

Section 1. That Chapter 5, Article 2 of the Code of the City of Detroit be amended by amending Sections 5-2-1.1, 5-2-3 and 5-2-24, and by adding new sections to be known as Sections 5-2-1.2, 5-2-9.1 and 5-2-24.1 to read as follows:

Sec. 5-2-1.1.

No amusement consisting of an amusement park, arcade, archery gallery, baseball batting and practice net, outdoor circus, menagerie or exhibits, concert cafe, concert hall, coin-operated motion picture device, golf school, including driving nets, putting greens, practice driving courses or miniature golf courses, kiddie ride, riding device, shooting gallery, tracks, including bicycles, go-cart, midget auto racing or similar devices, or rebound tumbling or trampoline center shall hereafter be established within the city unless a petition shall be filed with the police department signed by fifty-one per cent of the people living or doing business within a radius of five hundred feet of the premises upon which the amusement is to be established; provided, that miniature golf courses may be established upon the petition of fifty-one per cent of the people living or doing business within a radius of two hundred feet of the premises upon which such miniature golf course is to be established.

It shall be unlawful for any person to hereafter operate an Adult Motion Picture Theater, Adult Mini Motion Picture Theater or Drive-in Theater until he shall have complied with the requirements of the Official Zoning Ordinance, the provisions of this article and other applicable ordinances of the City of Detroit.

Sec. 5-2-1.2. Definitions

For the purpose of this article the following words and phrases shall have the meanings respectively ascribed to them by this section:

Adult Motion Picture Theater:

An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or charcterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas", (as defined below), for observation by patrons therein.

Adult Mini Motion Picture Theater:

An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or charcterized by an empahsis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas", (as defined below) for observation by patrons therein.

"Specified Sexual Activities":

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

"Specified Anatomical Areas":

1. Less than completely and opaquely covered;

(a) Human genitals, pubic region, (b) buttock, and

(c) female breast below a point immediately above the top of the areola; and

2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Sec. 5-2-3.

The Mayor may refuse to issue a license for the operation of any business regulated by this article, and may revoke any license already issued upon proof submitted to him of the violation by an applicant, or licensee, his agent or employee, within the preceding two years, of any criminal statute of the State, or of any ordinance of this city regulating, controlling or in any way relating to the construction, use or operation of any of the establishments included in this article which evidences a flagrant disregard for the safety or welfare of either the patrons, employees, or persons residing or doing business nearby.

Sec. 5-2-9.1

It shall be unlawful for any licensee, his agent or employee to knowingly permit any exhibition or advertising in connection with any establishment regulated under this article depicting, describing or relating to "Specified Sexual Acitvities" or "Specified Anatomical Area" to be displayed in any manner which is visible from any public street or highway.

Sec. 5-2-24. The license fee for all motion picture theaters, except adult motion picture theaters and adult mini motion picture theaters including all motion picture theaters which, in addition to motion pictures, offer other entertainment, amusement or diversions or which, in addition to motion pictures, offer or exhibit regular stage shows, so-called, or theatricals, shall be based on seating capacity as follows:

(a) Under five fundred seats, fifty-five dollars annually.

(b) Five hundred to one thousand seats, seventy dollars annually.

(c) One thousand one to two thousand seats, ninety-five dollars annually.

(d) Over two thousand seats, one hundred seventy dollars annually.

Sec. 5-2-24.1. The license fee for all adult motion picture theaters and adult mini motion picture theaters, including those which, in addition to adult motion pictures offer other entertainment, amusement or diversions or which, in addition to adult motion pictures offer or exhibit regular stage shows so-called, or theatricals, shall be based on seating capacity as follows:

(A) Adult mini motion picture theaters having less than fifty seats, fifty-five dollars annually.

(B) Adult motion picture theaters:

1. Fifty to five hundred seats, fifty-five dollars annually.
2. Five hundred one to one thousand seats, seventy dollars annually.
3. One thousand one to two thousand seats, ninety-five dollars annually.
4. Over two thousand seats, one hundred seventy dollars annually.

Section 2. This ordinance is declared necessary for the preservation of the public peace, health, safety and welfare of the people of the City of Detroit and is hereby given immediate effect.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

(JCC p. 2430-32, October 3, 1972)

Passed October 24, 1972.

Approved October 26, 1972.

Published November 1, 2, 3, 1972.

Effective November 2, 1972.

GEORGE C. EDWARDS
City Clerk

APPENDIX Q

ORDINANCE NO. 891-G

CHAPTER 68

AMENDMENT TO TEXT OF ZONING ORDINANCE

Requirement of consent of 51% of adjacent property owners to waive prohibition against establishment of adult businesses in certain areas of city.

AN ORDINANCE to amend Ordinance No. 390-G, entitled: "An Ordinance to establish districts in the City of Detroit; to regulate the use of land and structures therein; to regulate and limit the height, the area, the bulk and location of buildings; to regulate and restrict the location of trades and industries and the location of buildings designed for specified uses; to regulate and determine the area of yards, courts and other open spaces; to regulate the density of population; to provide for the establishment of a program to develop and upgrade the appearance of places of businesses or other establishments and to provide a local assessment district for the payment of the cost of such improvements according to the benefits to be derived therefrom; to provide for the administration and enforcement of this Ordinance; to provide for a Board of Appeals, and its powers and duties; and to provide a penalty for the violation of the terms thereof," as amended, by amending Sections 66.0103, 101.0300, 102.0300 and 104.0100.

WHEREAS, It has been demonstrated that the establishment of adult businesses in business districts, which are immediately adjacent to and which serve residential neighborhoods, has a deleterious effect on both the business and residential segments of the neighborhood, causing blight and a downgrading of property values; and

WHEREAS, The prohibition against the establishment of more than two regulated uses within 1,000 feet of each other serves to avoid the clustering of certain businesses which, when located in close proximity to each other, tend to create a "skid row" atmosphere; and

WHEREAS, Such prohibition fails to avoid the deleterious effects of blight and devaluation of both business and residential property values resulting from the establishment of an adult book store, adult motion picture theatre, adult mini motion picture theatre or Group "D" cabaret in a business district which is immediately adjacent to and which serves residential neighborhoods; and

WHEREAS, Concern for, and pride in, the orderly planning and development of a neighborhood should be encouraged and fostered in those persons who comprise the business and residential segments of that neighborhood; and

WHEREAS, Those business districts in the City of Detroit which serve residential areas (and the downtown loop area which serves the whole city), are designated as B1, B2, B3, B4, B5, and B6 zoned districts; and

WHEREAS, Adult motion picture theatres, adult mini motion picture theatres, adult book stores and Group "D" cabarets are not permitted in B1, B2 or B3 zoned districts, and are only permitted with the approval of the City Plan Commission in B4, B5 and B6 zoned districts; and

WHEREAS, the City Plan Commission should be guided by the expressed will of those businesses and residents which are immediately adjacent to the proposed location of, and therefore most affected by the existence of, any adult motion picture theatre, adult mini motion picture theatre, adult book store or Group "D" cabaret in a B4, B5 or B6 zoned district;

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

Section 1. That Ordinance No. 390-G, entitled: "An Ordinance to establish districts in the City of Detroit; to regulate the use of land and structures therein; to regulate and limit the height, the area, the bulk and location of buildings; to regulate and restrict the location of trades and industries and the location of buildings designed for specified uses; to regulate and determine the area of yards, courts and other open spaces; to regulate the density of population; to provide for the establishment of a program to develop and upgrade the appearance of places of businesses or other establishments and to provide a local assessment district for the payment of the cost of such improvements according to the benefits to be derived therefrom; to provide for the administration and enforcement of this Ordinance; to provide for a Board of Appeals, and its powers and duties; and to provide a penalty for the violation of the terms thereof," as amended, be and the same is hereby amended by amending Sections 66.0103, 101.0300, 102.0300, and 104.0100, to read as follows:

Section 66.0103

It shall be unlawful to hereafter establish any Adult Bookstore, Adult Motion Picture Theatre, Adult Mini Motion Picture Theatre or Group "D" Cabaret in a B4, B5 or B6 Zoned District if the proposed location is within 500 feet of a Residentially Zoned District. This prohibition shall be waived upon the presentment to the City Plan Commission of a validated petition requesting such waiver, signed by 51% of those persons owning, residing, or doing business within 500 feet of the proposed location.

The Commissioner of the Department of Buildings and Safety Engineering shall adopt rules and regulations governing the procedure for securing the petition of consent provided for in this section of the ordinance. The rules

shall provide that the circulator of the petition requesting a waiver shall subscribe to an affidavit attesting to the fact that the petition was circulated in accordance with the rules of the Department of Buildings and Safety Engineering and that the circulator personally witnessed the signatures on the petition and that the same were affixed to the petition by the person whose name appeared thereon.

The City Plan Commission shall not consider the waiver of locational requirements set forth in Sections 66.0000 to 66.0102 until the above described petition, if required shall have been filed and verified.

Section 101.0300

The following uses, and uses accessory thereto, shall be permitted by the Commission, or Council if specified, and subject to compliance with the provisions and standards as specified in Section 65.0000 and to all conditions hereinafter listed.

Adult

Adult Book Stores as regulated by Section 66.0000.

Adult Motion Picture Theaters as regulated in Section 66.0000.

Adult Mini Motion Picture Theaters as regulated by Section 66.0000.

Cabaret

Group "D", Cabarets as regulated by Section 66.0000.

Uses permitted as a matter of right in the M2 district

Hotels or motels as regulated by Section 66.0000

Section 102.0300

The following uses and uses accessory thereto shall be permitted by the Commission, or Council if specified, and subject to compliance with the provisions and standards

as set forth in Article VI, Section 65.0000 and to any other conditions hereinafter listed. For heliports and industrial uses, the Commission may approve the use only after a report and recommendation has been received from the Industrial Review Committee.

Any use permitted as a matter of right in the M3 district

Adult

Adult Book Stores as regulated by Section 66.0000.

Adult Motion Picture Theaters as regulated by Section 66.0000.

Adult Mini Motion Picture Theaters as regulated by Section 66.0000.

Cabaret

Group "D", Cabarets as regulated by Section 66.0000.

Heliports

Hotels or motels

Section 104.0100

Uses permitted as a matter of right in the M3 District

Adult

Adult Book Stores as regulated by Section 66.0000.

Adult Motion Picture Theaters as regulated by Section 66.0000.

Adult Mini Motion Picture Theaters as regulated by Section 66.0000.

Cabaret

Group "D" Cabarets as regulated by Section 66.0000

Abrasives manufacture

Acetylene manufacture

Ammonia manufacture

Annealing or heat treating plants

Balls or bearings manufacture

Battery rebuilding

Bed spring manufacture

Bleaching powder manufacture

Boiler works

Bolts or nuts manufacture

Brick or building block manufacture

Candle manufacture

Carbonic gas manufacture or storage

Carbonic ice manufacture

Cattle or sheep dip manufacture

Cellophane or celluloid manufacture

Ceramic products manufacture

Chlorine gas manufacture

Clay products manufacture

Concrete batching plants

Concrete pipe or concrete pipe products manufacture

Dextrine manufacture

Docks (waterway shipping)

Dyestuffs manufacture

Elevators, grain

Engine manufacture

Feed or gain mill

Felt manufacture

Glass manufacture

Glucose manufacture

Graphite manufacture

Gutta percha manufacture or treatment

Ink manufacture (from basic substance)

Jute fabrication

Open storage of equipment or supplies for building or construction contractors

Pharmaceutical products manufacture

Phenol manufacture

Proxylin plastic manufacture or processing

Roofing materials manufacture excluding tar products

Rope manufacture

Rug manufacture

Salt works

Sewage disposal plants

Shoe polish manufacture

Soap manufacture

Starch manufacture

Steam generating plants

Sugar refining

Terra cotta manufacture

Tire manufacture

Turpentine manufacture

Wallboard manufacture

Wholesaling, warehousing, storage, or transfer building

Wire manufacture

Yeast manufacture

Uses similar to the above specified uses

Accessory uses, incidental to and on the same zoning lot as the principal use

Section 2. This Ordinance is declared necessary for the preservation of the public peace, health, safety, and welfare of the people of the City of Detroit and is hereby given immediate effect.

(JCC p. 707-710, April 2, 1974).

Passed April 23, 1974.

Approved April 30, 1974

Published May 1, 2, 3, 1974.

Effective May 2, 1984.

JAMES H. BRADLEY
City Clerk

APPENDIX R

ORDINANCE NO. 105565

AN ORDINANCE relating to land use and zoning; amending Section 3.21, 5.3, 16.2 and 17.2 of the Zoning Ordinance (86300) to define "adult motion picture theater", to permit such use only in the BM, CM and CMT zones, and to provide for termination of such uses in all other zones.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That Section 3.21 of the Zoning Ordinance (86300), as last amended by Ordinance 98426, is further amended to read as follows:

THEATER, ADULT MOTION PICTURE

An enclosed building used for presenting motion picture films distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas", as hereinafter defined, for observation by patrons therein:

"Specified Sexual Activities":

1. *Human genitals in a state of sexual stimulation or arousal;*
2. *Acts of human masturbation, sexual intercourse or sodomy;*
3. *Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.*

"Specified Anatomical Areas":

1. *Less than completely and opaquely covered:*

   (a) Human genitals, pubic region, (b) buttock, and (c) female breast below a point immediately above the top of the areola; and

2. *Human male genitals in a discernibly turgid state, even if completely and opaquely covered.*

TOWER STRUCTURE

A building or building part, more than sixty (60) feet in height and normally residential in design, which may or may not be built on top of a base structure.

TRADE OR BUSINESS SCHOOL

An establishment conducted as a commercial enterprise for teaching trades, business or secretarial courses, instrumental or vocal music, art, dancing, barbering or hairdressing or for teaching similar skills.

TRAILER HOUSE (See House Trailer)

TRAILER PARK

Any lot or any portion of any lot used or offered for use for the accomodation of inhabited house trailers for compensation.

TRUCK AND TRAILER SALES LOT

An outdoor area used for the display, sale or rental of new or used trucks or truck trailers, where no repair work is done except minor incidental repair to vehicles to be displayed, sold or rented on the premises.

Section 2. That Section 5.3 of the Zoning Ordinance (86300), as last amended by Ordinance 104971, is further amended to read as follows:

Section 5.3 Nonconforming Uses and Buildings

5.31 Continuing Existing Use

Any nonconforming building or use may be continued, subject, however, to provisions of Section 5.3.

5.32 Buildings Nonconforming as to Bulk

Any building conforming as to use but which is a building nonconforming as to bulk as of the effective date of this Ordinance may be altered, repaired or extended; provided, that such alteration, repair or extension does not cause such building to further exceed the bulk provisions of this Ordinance.

5.33 Termination of certain Nonconforming Uses

(a) Any nonconforming use not involving a structure or one involving a structure having assessed value of less than one hundred dollars ($100) on the effective date of this Ordinance may be continued for no longer than one year after said date, and any nonconforming use involving a structure having an assessed value of more than one hundred dollars ($100) but less than three hundred dollars ($300) on the effective date of this Ordinance may be continued no longer than two years after said date; provided, however, the above provisions shall not apply to any nonconforming advertising sign.

(b) All advertising signs in R and BN Zones which have been nonconforming uses for a period of three or more years prior to July 1, 1962, shall be discontinued by July 1, 1963, and all other nonconforming advertising sign uses in R and BN Zones shall be discontinued within three years of the date such sign became or becomes a nonconforming use; provided, that such time limitations may be extended for periods of not to exceed two years at a time by the Superintendent of Buildings, upon application by the owner of such sign and payment of a Twenty-five Dollar ($25.00) filing fee, if said Superintendent finds that such nonconforming use is on a lot with or adjacent to and fronting on

the same street with uses (other than another advertising sign) which are first permitted in BC or more intensive zones or that such nonconforming use is on a lot separated from the nearest portion of an existing R or BN use by a grade equal to the height of the sign above the ground, and further finds that continuance of such nonconforming sign will not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the sign is located, and is not otherwise inconsistent with the spirit and purpose of the Zoning Ordinance and that such advertising sign has been and will be properly maintained. Decisions of said Superinendent hereunder shall be final, subject to review by the City Council upon application.

(c) Advertising signs in all zones other than the M, IG, and IH Zones which are nonconforming because located upon and supported by a roof or parapet of a building or structure shall be discontinued and removed upon notification in writing within a period of from three to seven years from August 1, 1975 or from the date such sign became or becomes nonconforming in accordance with an amortization schedule established by the Superintendent and based upon the age, condition, cost, and remaining useful life of the sign.

(d) Adult Motion Picture Theaters which are nonconforming in the zone in which located shall be discontinued within 90 days of the date the use became or becomes nonconforming.

5.34 Limitations on Nonconforming Uses

(a) Subject to Section 5.33, any nonconforming building or part may be maintained with or-

dinary repair provided, however, no such building or part shall be extended, expanded or structurally altered, except as otherwise required by law, nor shall a nonconforming use be extended or expanded, provided further, that nothing in this Ordinance shall prevent the restoration of a nonconforming building destroyed by fire or other act of God.

(b) Any change of a nonconforming use in a conforming building shall be to a conforming use.

(c) Except as provided in Section 5.34(d) or (e), a nonconforming use in a nonconforming building or part may be changed only to a use permitted in a less intensive zone than said nonconforming use.

(d) A nonconforming building or part which has been unoccupied continuously for one (1) year or more shall not be reoccupied except by a conforming use.

(e) In any zone, except an M or I Zone, a nonconforming use in a nonconforming building, may be changed to a use permitted in a less intensive zone than the zone in which the nonconforming use would be conforming, or to another use which is listed and grouped in the same zone classification as an outright permitted use, provided such new use will be no more detrimental or injurious than the previous nonconforming use to other property in the same zone or vicinity.

5.35 Existing Automobile Service Stations

Existing automobile service stations may be extended, expanded or structurally altered in the BN and more intensive zones without obtaining conditional use authorization from the *Hearing Examiner*

or Board where the estimated cost of such improvements within any 12 month period does not exceed 25 percent of the true and fair market value of such automobile service station as computed from the assessed value of the existing use.

Section 3. That Section 16.2 of the Zoning Ordinance (86300), as last amended by Ordinance 94036, is divided into Sections designated Section 16.20 through 16.23 and further amended to read as follows:

Section 16.20 Principal use permitted outright shall be as set forth in Sections 16.21 through 16.23 of this Article. Reference in other sections of this Ordinance to "Section 16.2" shall mean and include Sections 16.20 through 16.23, inclusive.

Section 16.21 The following uses:

(a) Window displays.

(b) Retail store.

(c) Personal service establishment, such as beauty shop, barber shop and shoe repair shop.

(d) Restaurant, cafe, or establishment selling alcoholic beverages for consumption on the premises with or without live entertainment or dancing; taverns, package liquor stores.

(e) Bank or other financial institution.

(f) Hotel, Motel.

(g) Transportation ticket office, travel agency office.

(h) Private or public art gallery, museum and library.

(i) Locksmith

(j) Catering establishment selling at retail.

(k) Glazed display case.

(l) Child care nursery.

(m) Public playground and public park, including customary buildings and activities.

(n) Theater *and adult motion picture theater.*

(o) Advertising sign when subject to applicable provisions of this and other Ordinances.

(p) Automobile rental office.

Section 16.22 Uses permitted when occupying other than street level floor space; or, permitted when occupying street level floor space providing that such use shall be separated from the street by a space occupied or intended to be occupied by uses permitted in Section 16.21, and also separated by a view obscuring wall located across the rear of such permitted uses as specified in Section 16.21:

(a) Business or Professional office.

(b) Catering establishment.

(c) Taxidermy shop.

(d) Wholesale store, including wholesale storage of the following merchandise: jewelry, optical and photographic goods, pharmaceuticals, and cosmetics, and other similar high value, low bulk articles.

(e) Telephone exchange, static transformer and booster station, and other public utility service use.

(f) Meeting hall, auditorium, theater, bowling lane, skating rink, pool hall, dance hall.

(g) Radio and television studio.

(h) Appliance repair.

Section 16.23 Uses permitted when occupying other than street level floor space:

(a) Uses permitted in Sections 16.21 and 16.22 without specified limitations.

(b) Trade or business school.

(c) Custom manufacture for sale at retail on the premises of articles or merchandise from the following previously prepared materials: bone, canvas, cellophane, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semi-precious metals or stones, sheet metal (excluding stampings of metal heavier than fourteen (14) gauge), shell, textiles, tobacco, wax, wire, wood and yarns.

(d) Experimental or testing laboratroy which does not employ machinery or equipment prohibited by Section 16.7(b).

(e) Private or fraternal club, lodge, social or recreational building with dining and other social facilities.

(f) Art, dance, and/or music school or studio.

(g) Printing and publishing establishment.

(h) Manufacture of musical instruments, except pianos and organs; toys, novelties, rubber or metal stamps, or other small moulded rubber products; pottery and figurines or other similar ceramic products from previously pulverized clay, kilns to be fired by electricity or gas.

(i) Manufacture or assembly of electrical appliances, electronic instruments and devices, and radios and phonographs.

Section 4. That Section 17.21 of the Zoning Ordinance, as last amended by Ordinance 104423, is further amended to read as follows:

Section 17.21 The following uses:

(a) Retail store, business and professional office, personal service establishment, bank or other financial institution, catering establishment, restaurant, cafe, or establishment selling alcoholic beverages for consumption on the premises, with or without live entertainment or dancing, window display space, glazed display case, transportation ticket office, travel agency office, and bakery, provided it sells its products at retail on the premises.

(b) Hotel, apartment hotel and motel.

(c) Pool hall, public dance hall, tavern, package liquor store, and other similar enterprises.

(d) Frozen food lockers, retail ice dispensary, not including ice manufacture, plant nursery including retail sales of products.

(e) Taxidermy shop, locksmith, appliance repair shop, upholstery establishment, retail pet shop or small animal clinic for out-patient treatment only, retail building supply store, automobile laundry, printing and publishing establishment, and photographic processing laboratory.

(f) Meeting hall, auditorium, theater, *adult motion picture theater*, bowling lanes, skating rink including outdoor ice-skating rink.

(g) Automobile and pleasure boat display or sales establishment, automobile repair, minor.

(h) Automobile rental and sales, provided that any portion of said area not permanently maintained in a landscaped condition shall be graded, drained and surfaced as required in Section 23.41 (c).

(i) Parking garage and automobile rental garage, commercial parking lot for private passenger

vehicles only, open structures for parking of private passenger vehicles only.

(j) Trade or business school, art, dance and/or music school or studio.

(k) Laundry, dry cleaning, dyeing or rug cleaning plants.

(l) Warehouse or wholesale store; wholesale office, including wholesale storage of the following merchandise: jewelry, optical and photographic goods, pharmaceuticals, and cosmetics, and other similar high value, low bulk articles.

(m) Experimental or testing laboratory which does not employ machinery or equipment not permitted in the CM Zone.

(n) Fire station, public and private art gallery, library, museum, branch telephone exchange, micro-wave or line-of-sight transmission station, static transformer and booster station, and other public utility service uses when necessary due to operating requirements; but not including yards or buildings for service or storage.

(o) Church, private or fraternal club, lodge, social or recreational building.

(p) Advertising sign, when subject to applicable provisions of this and other Ordinances.

(q) Uses permitted in Section 19.22, provided that such uses shall not occupy any street level floor space.

(r) Public or private park.

(s) Existing railroad rights of way, including passenger shelter stations but not including switching, storage, freight yards or sidings.

(t) Radio and television studio.

Section 5. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 17 day of May 1976, and signed by me in open session in authentication of its passage this 17 day of May, 1976.

/s/ [Illegible]
President of the City Council.

Approved by me this 28 day of May, 1976.

/s/ WM. UHLMAN
Mayor.

Filed by me this 28 day of May, 1976.

Attest: /s/ [Illegible]
City Comptroller and
City Clerk.

(SEAL)
Published

By /s/ [Illegible]
Deputy Clerk.

STATE OF WASHINGTON)
COUNTY OF KING) ss
CITY OF SEATTLE)

I, TIM HILL, Comptroller and City Clerk of the City of Seattle, do hereby certify that the within and foregoing is a true and correct copy of the original instrument as the same appears on file, and of record in this department.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of The City of Seattle, this February 4, 1985.

TIM HILL
Comptroller and City Clerk

By: /s/ Linda L. Diaz
Deputy Clerk

APPENDIX S

ORDINANCE 105584

AN ORDINANCE relating to land use and zoning; amending Section 18.7 of the Zoning Ordinance (86300) to prohibit adult motion picture theaters in the CG and all more intensive zones.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. That Section 18.7 of the Zoning Ordinance (86300) is amended to read as follows:

Section 18.7 Prohibited Uses:

(a) Any use other than a permitted CG use, which is permitted in a more intensive zone.

(b) Adult motion picture theater.

Section 2. This ordinance shall take effect and be in force thirty days from and after his passage and approval, If approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 1 day of June, 1976, and signed by me in open session in authentication of its passage this 1 day of June, 1976.

/s/ [Illegible]
President of the City Council.

Approved by me this 7 day of June, 1976.

/s/ WM. UHLMAN
Mayor.

Filed by me this 7 day of June, 1976.

Attest: /s/ [Illegible]
City Comptroller and
City Clerk.

(SEAL)

By /s/ [Illegible]
Deputy Clerk.

STATE OF WASHINGTON)
COUNTY OF KING) ss
CITY OF SEATTLE)

I, TIM HILL, Comptroller and City Clerk of the City of Seattle, do hereby certify that the within and foregoing is a true and correct copy of the original instrument as the same appears on file, and of record in this department.

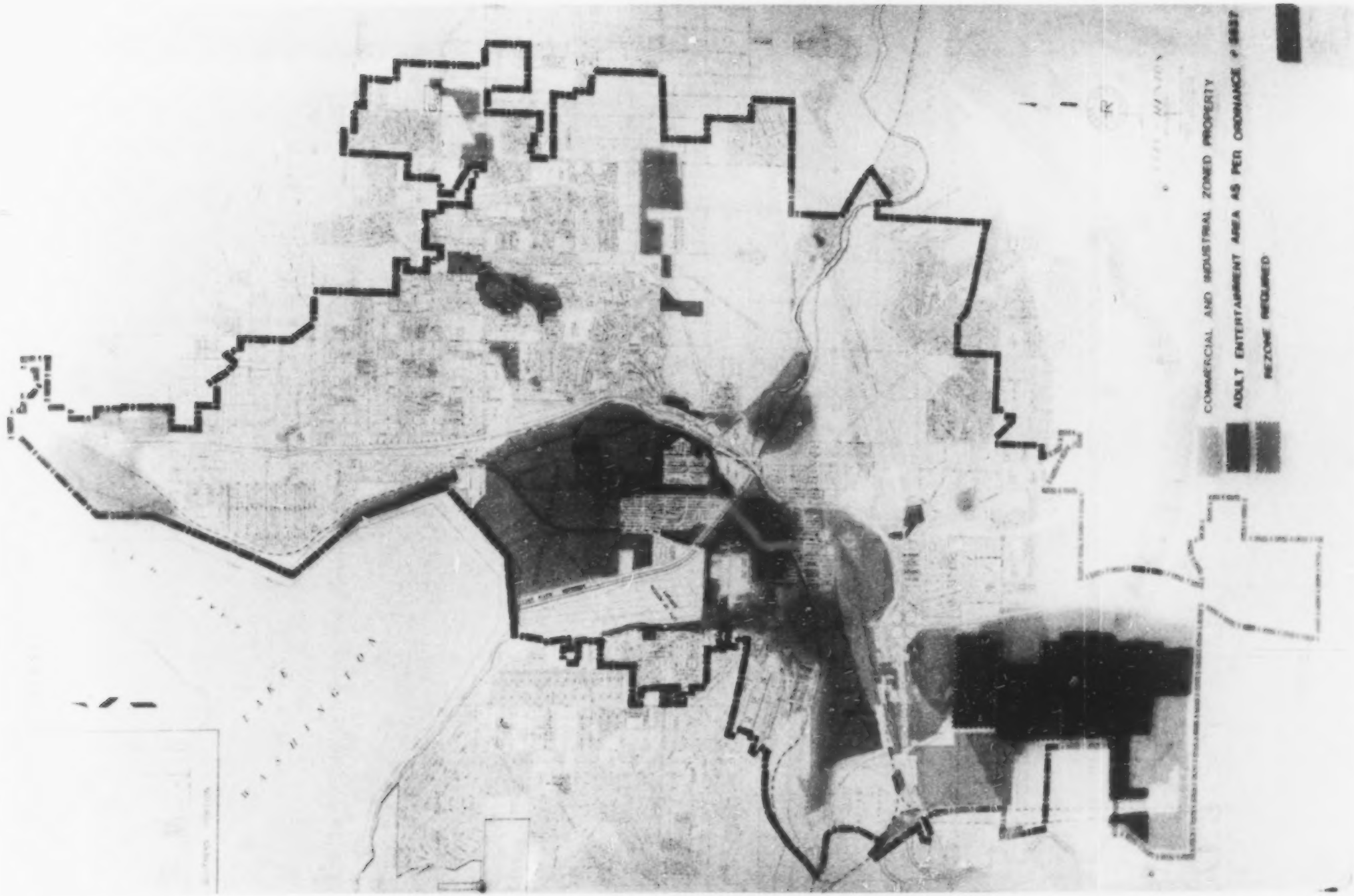
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of The City of Seattle, this 2-5-1985.

TIM HILL
Comptroller and City Clerk

By: /s/ Dorothy J. McFarland
Deputy Clerk

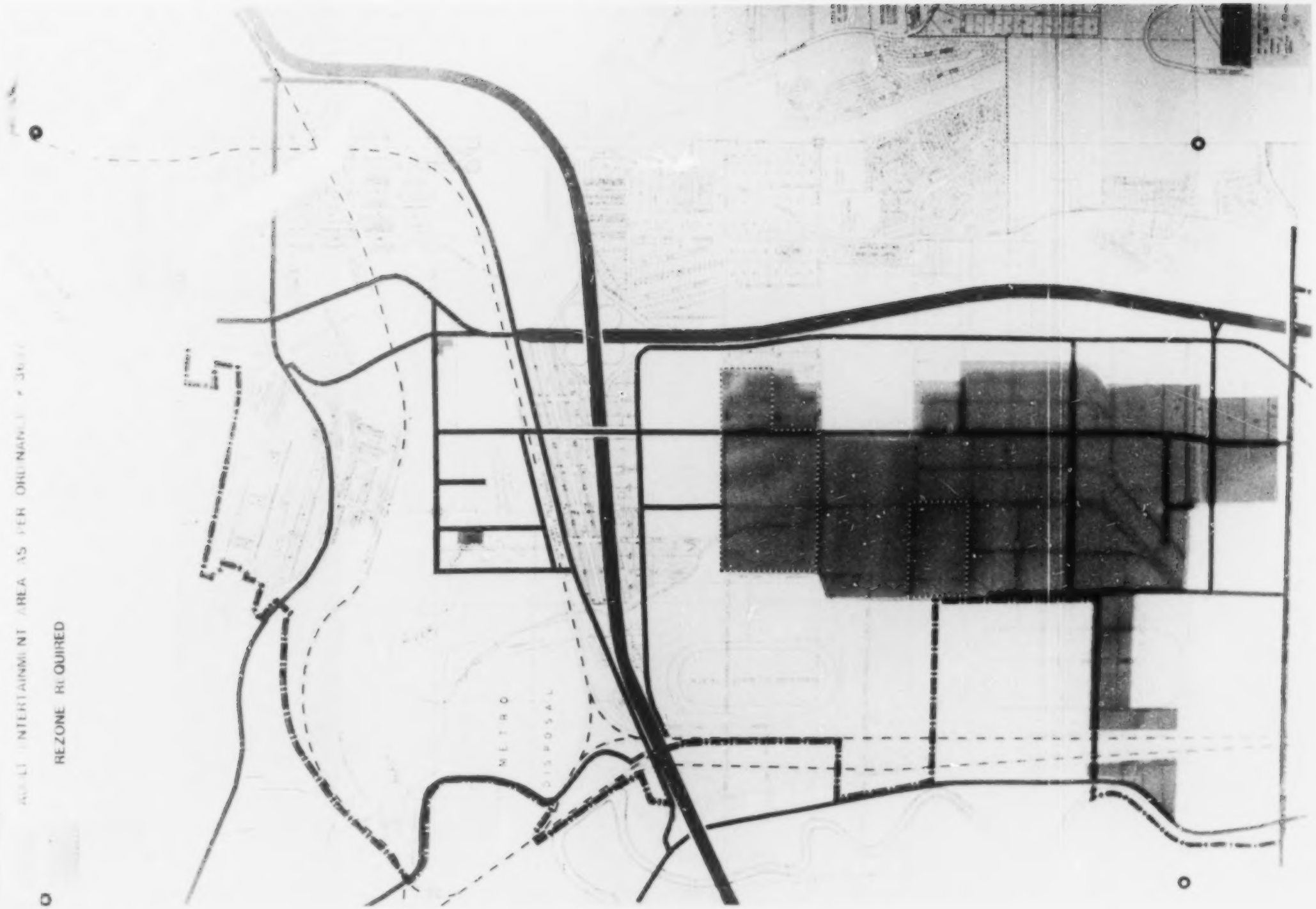
APPENDIX T

Exhibit A-1



APPENDIX U

Exhibit A-2



APPENDIX V

Exhibit A-3